

ENVIRONMENTAL REVIEW COMMISSION



*REPORT TO THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA*

2000 REGULAR SESSION

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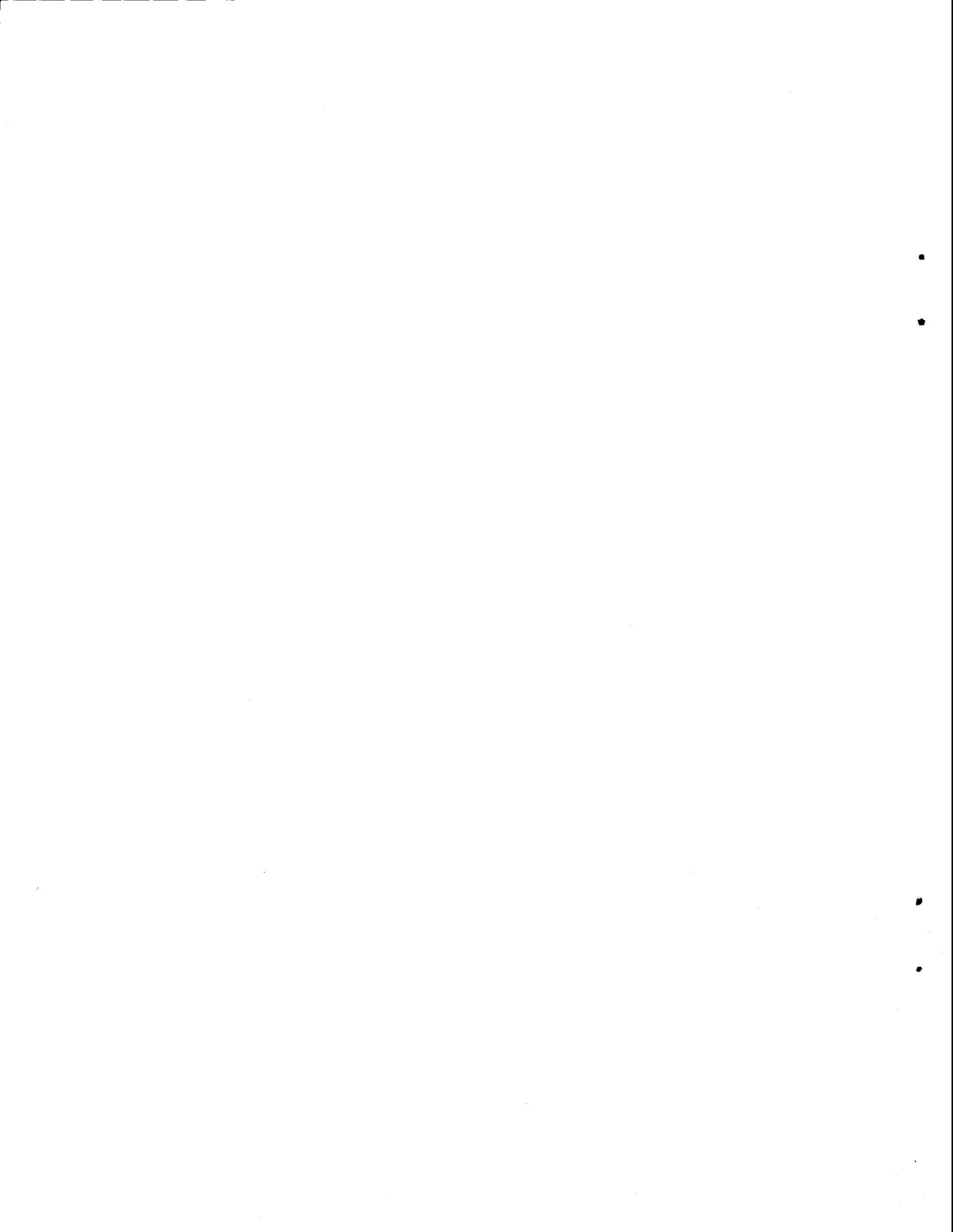
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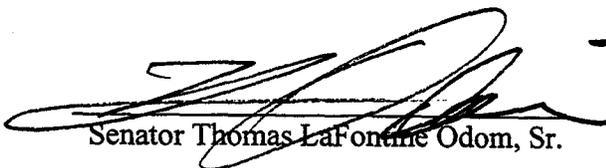
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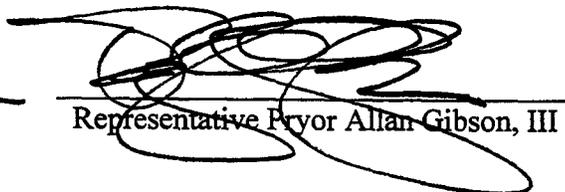
June 14, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY

Pursuant Article 12D of the North Carolina General Statutes, the Environmental Review Commission submits its report and recommendations to the 1999 General Assembly for the 2000 Regular Session.

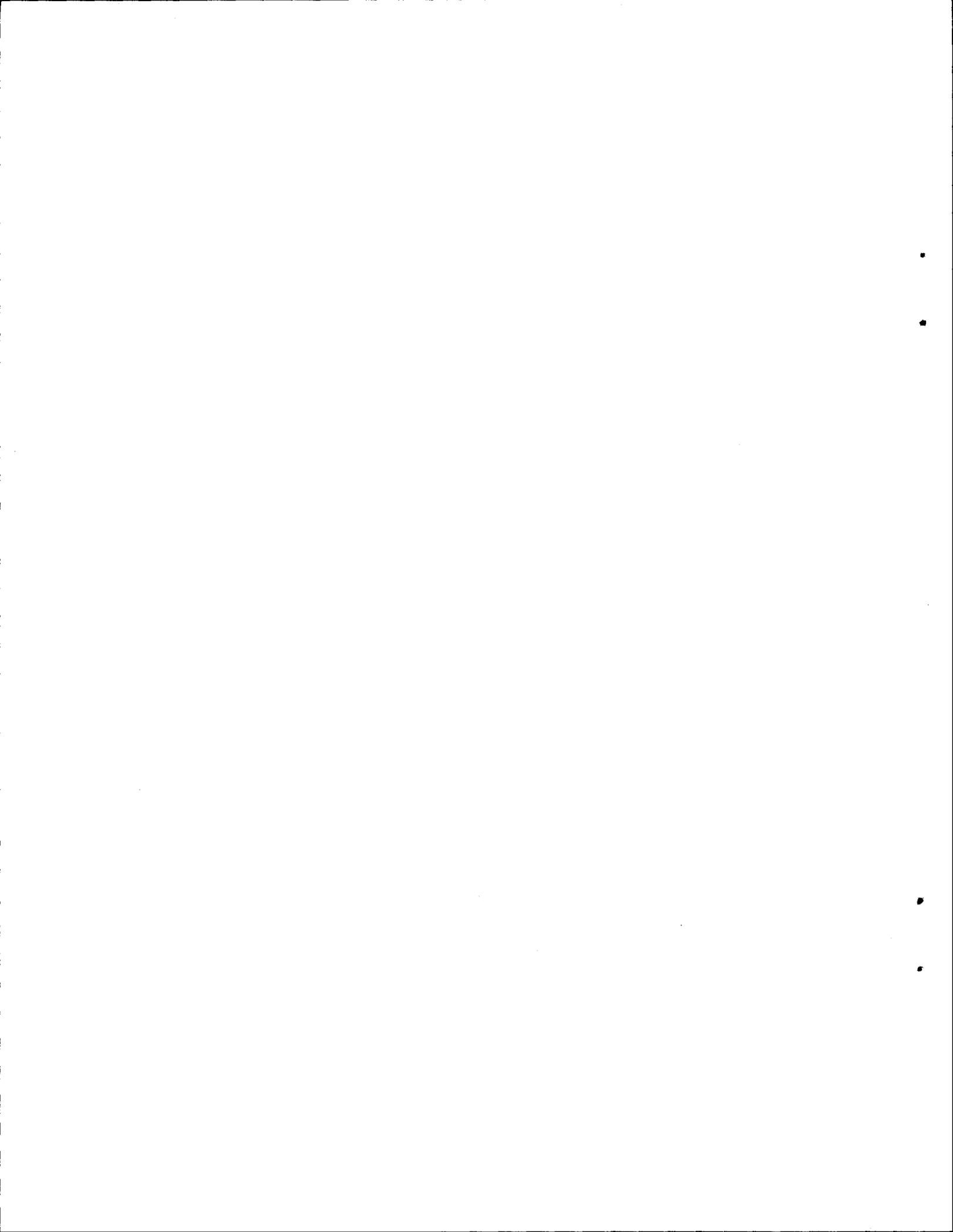
Respectfully submitted,


Senator Thomas LaFonnie Odom, Sr.


Representative Pryor Allan Gibson, III

Co-chairs
Environmental Review Commission





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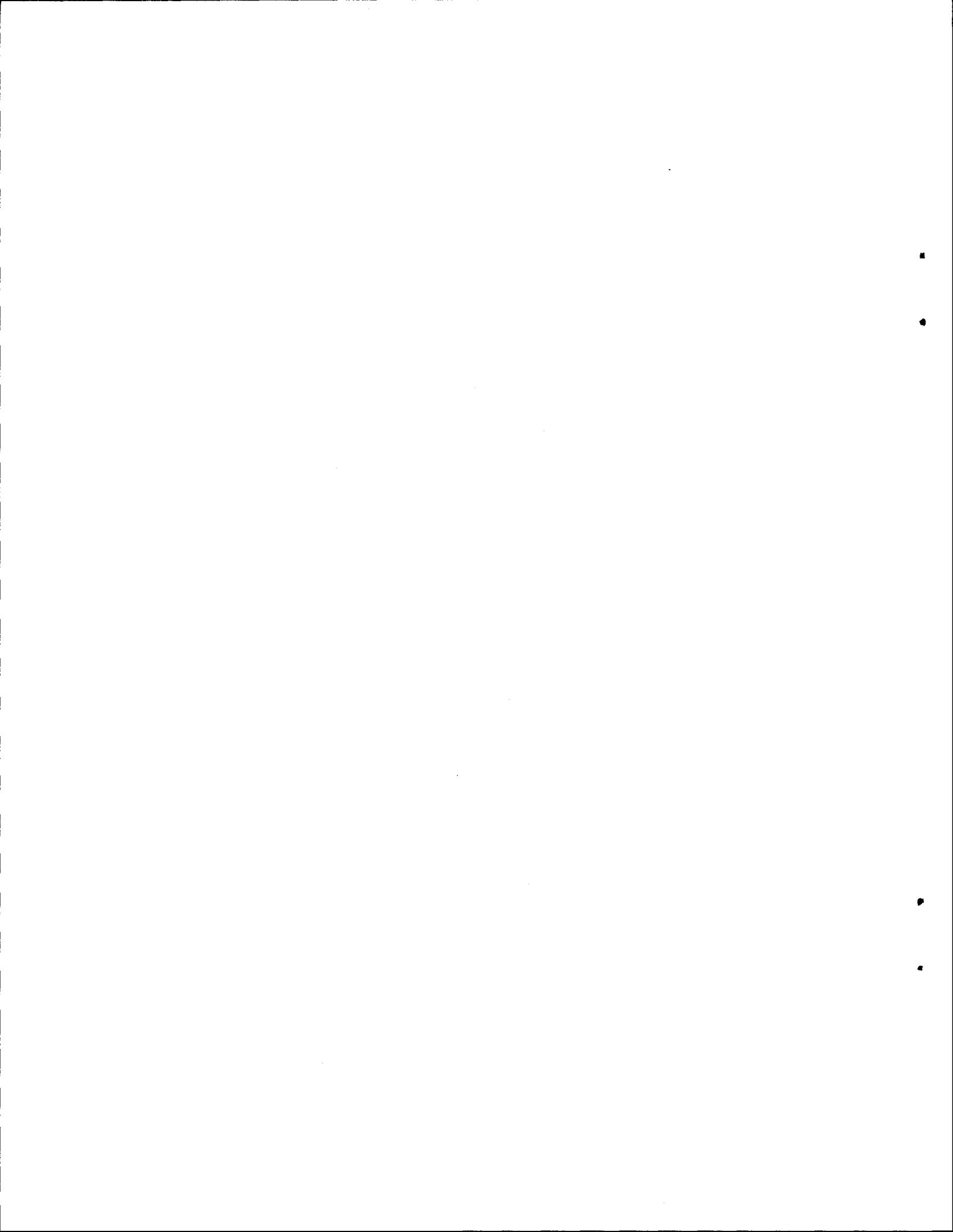
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North Carolina General Statutes
ARTICLE 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

The Environmental Review Commission is hereby established.

§ 120-70.42. Membership; cochair; vacancies; quorum.

The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair of the Senate Committee on Environment and Natural Resources, and the Chair of the House of Representatives Committee on the Environment. The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair. Any vacancy which occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of eight members.

§ 120-70.43. Powers and duties.

- (a) The Environmental Review Commission shall have the following powers and duties:
- (1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:
 - a. Benefits of each program relative to costs;
 - b. Achievement of program goals;
 - c. Use of measures by which the success or failure of a program can be measured; and
 - d. Conformity with legislative intent;
 - (2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
 - a. Improvements in administrative structure, practices, and procedures;
 - b. Increased integration and coordination of programs and functions;
 - c. Increased efficiency in budgeting and use of resources;
 - d. Efficient administration of licensing, permitting, and grant programs;
 - e. Prompt, effective response to environmental emergencies;
 - f. Opportunities for effective citizen participation; and
 - g. Broadening of career opportunities for professional staff;
 - (3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
 - a. Ways in which agencies may operate more efficiently and economically;

- b. Ways in which agencies can provide better services to the State and to the people;
and
 - c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;
- (4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;
 - (5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;
 - (6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
 - (7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.
- (b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:
- (1) Monitoring the implementation of Session Laws 1989, c. 727;
 - (2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;
 - (3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and
 - (4) Recodification of the General Statutes relating to the environment and environmental agencies.
- (c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:
- (1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;

- (2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;
- (3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;
- (4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;
- (5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
- (6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;
- (7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;
- (8) To examine criteria and procedures for the selection of sites for hazardous waste treatment, storage, and disposal facilities which are adopted by the Hazardous Waste Management Commission and determine whether any modification is needed;
- (9) To analyze existing State law governing the Hazardous Waste Management Commission and determine whether any changes are needed;
- (10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;
- (11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and
- (12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management.

§ 120-70.44. Additional powers.

The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

§ 120-70.45. Compensation and expenses of members.

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

§ 120-70.46. Staffing.

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission.

§ 120-70.47. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission.

COMMISSION PROCEEDINGS

The Environmental Review Commission met nine times between the 1999 Regular Session of the 1999 General Assembly and reporting to the 2000 Regular Session of the 1999 General Assembly. The proceedings of each meeting are summarized below. Complete sets of minutes for each meeting, including all materials distributed, are available in the Legislative Library.

November 4, 1999

1999 Hurricanes

The Environmental Review Commission (ERC) heard briefings on the impact of the 1999 hurricanes and the response by State agencies. Presentations were given by representatives from the Division of Emergency Management in the Department of Crime Control and Public Safety; the Department of Commerce; the Department of Transportation; the Department of Health and Human Services; the Department of Agriculture and Consumer Services; the Department of Environment and Natural Resources (DENR); and the Department of Revenue. The ERC also heard a report on floodplain mapping, which noted that the floodplain maps for many areas of the State are out-of-date. Members expressed concern over what may be rebuilt in the floodplain and the length of time it would take for participants in buy-out programs to receive the money to relocate.

Clean Water Management Trust Fund

David McNaught, Executive Director of the Clean Water Management Trust Fund, reported on projects awarded grants from the Fund. He said the Fund had established a special program to address the flooding problems associated with the hurricanes.

Solid waste

Paul S. Crissman, Environmental Supervisor for the Solid Waste Section of the Division of Waste Management in DENR, and Scott B. Mouw, Section Chief of the Community and Business Assistance Section of the Division of Waste Management in DENR, reported on solid waste management efforts in the State. They noted that most counties in the State are making negative progress towards reaching the statutory goal of reducing by 40% the quantity of solid waste discarded by each person. The presenters and the ERC members discussed potential measures to address this failure by making the disposal of solid waste in landfills more costly relative to the cost of recycling.

November 23, 1999

Environmental Management Commission

Dr. David H. Moreau, Chair of the Environmental Management Commission (EMC), gave a report on recent EMC activities. These included progress in rulemaking to limit the emissions of nitrogen oxides (NO_x) from complex sources, such as large shopping centers, and the EMC's progress in adopting a rule to regulate the emission of odor from animal waste management systems. Questions were raised about the impact on North Carolina of recent court decisions on air quality standards established by the federal Environmental Protection Agency (EPA). DENR representatives noted that the applicability of various federal standards had become less clear, but North Carolina could still proceed with its own air quality measures. Regarding the odor rule, a question was raised about the ability of a complainant to appeal a finding of no violation by DENR. DENR representatives were unable to answer conclusively.

Hurricane update

Michael A. Kelly, Director of the DENR Hurricane Response Center and Deputy Director of the Division of Waste Management in DENR, gave the ERC an update on the impacts of the 1999 hurricanes and DENR's response. O. Rolf Blizzard, Director of Special Projects in the Office of the President Pro Tempore of the Senate, reported on efforts to secure federal aid to fund hurricane recovery efforts in the State. There was considerable discussion regarding the finding that 30% of the drinking water wells tested after the hurricanes showed contamination, but that this was no worse than under non-flood conditions. Members also expressed concerns about the timelines for housing replacement, the accuracy of damage estimates, and the fact that Congress had appropriated less money for flood relief than the State had requested.

Emergency best management practices (BMPs) for animal waste management systems

Dewey Botts, Assistant Secretary for Natural Resources, and David S. Vogel, Director of the Division of Soil and Water Conservation in DENR, reported on the establishment of emergency BMPs for animal waste management systems adopted by the Soil and Water Conservation Commission in the wake of the 1999 hurricanes. They told the ERC that the priority consideration in adopting the BMPs was to protect lagoon integrity. Members raised questions regarding the legal authority of the Soil and Water Conservation Commission to adopt these BMPs outside of the rulemaking process. Mr. Vogel also announced that \$5.7 million from the Clean Water Management Trust Fund would be used to relocate swine farms out of the flood plain. Some concerns were expressed about how the spending would be prioritized and the effect of diverting money that would have otherwise been used for other projects. There was also some discussion of the potential for adopting alternative technologies to treat animal waste.

Enforcement of water quality laws

Coleen Sullins, Section Chief of the Water Quality Section of the Division of Water Quality in DENR, gave a report on the enforcement of water quality laws for animal waste management systems and facilities that discharge into surface waters, such as wastewater treatment plants.

Wetlands

Ms. Sullins also reported on the progress of the Wetlands Stream Management Advisory Committee, which is a stakeholder group that is working to improve regulatory and nonregulatory programs to protect wetlands and streams. Ms. Sullins also noted that a recently filed lawsuit questioned the authority of the State's wetlands protection programs.

Research

The ERC heard reports from university researchers on several projects related to water quality and animal waste management.

Dr. Kenneth H. Reckhow, Director of the Water Resources Research Institute at the University of North Carolina, reported on the Neuse River Modeling and Monitoring Project (MODMON). Dr. Reckhow said the models developed by the project will become increasingly beneficial for predicting the outcome of management techniques as the models are further developed.

Dr. Charles M. "Mike" Williams, Director of the Animal and Poultry Waste Management Center at North Carolina State University, reported on the following projects:

- **Alternative waste technologies:** Dr. Williams said that the key to making most alternative technologies work would be to take a systems approach so that the end product of treatment would have value, rather than be a liability.
- **Groundwater impacts of lagoons:** This study assessed contamination levels in groundwater at 125 feet, 250 feet, and 1000 feet from a selection of 34 lagoons. The study documented substantial contamination levels at the wells closest to the lagoons and significantly less at the more distant wells.
- **Atmospheric deposition of nitrogen in the Neuse Estuary:** This study found a significant association between animal waste lagoons and atmospheric deposition of nitrogen.

Dr. William T. Showers, Associate Professor in the Department of Marine, Earth, and Atmospheric Sciences at North Carolina State University, reported on a project to trace sources of nitrogen through identifying isotope markers. Dr. Showers said weather cycles influence the levels and sources of nitrogen in surface waters. He also noted that wetlands appear to absorb nutrients very well. Dr. Showers recommended that major nitrogen sources be moved out of groundwater recharge areas as well as floodplains and noted that more study of groundwater was needed. He also recommended the preservation of riparian buffers.

Joint Meeting with Joint Legislative Commission on Seafood and Aquaculture (JLCSA)

The ERC and the JLCSA met jointly to hear reports on fishery management plans and coastal habitat protection plans.

January 20, 2000

Wetlands

The ERC heard a report on the Wetlands Restoration Program from Ronald E. Ferrell, Program Manager of the Wetlands Restoration Program in DENR. Mr. Ferrell explained that wetland restoration efforts are being increasingly integrated with the basinwide water quality plans developed by the Division of Water Quality. He also explained that the new mitigation process, in which someone who fills a wetland can pay DENR to create a mitigating wetland, is more efficient and ecologically effective than the old process, in which the entity responsible for wetland destruction had to manage the mitigation project. Mr. Ferrell said the program has still not achieved the goal of no net loss of wetlands. In response to questions about stream restoration, Mr. Ferrell explained that increasing runoff from development led to stream degradation from higher velocities and volumes of water, and that this could be addressed by adding meanders and re-vegetating the banks. Members raised concerns about the cost per acre and per foot for wetland and stream restoration.

Basinwide Water Quality Plans

Coleen Sullins, Section Chief of the Water Quality Section in the Division of Water Quality in DENR, described the basinwide planning process. ERC members raised questions about how the basinwide plans addressed sedimentation and whether the plans were successful in improving water quality in general. Ms. Sullins responded by noting that nutrient reductions have been achieved in some streams, and that other agencies and organizations are using the plans to coordinate their water quality protection activities.

State Water Supply Plan

Anthony Young, Chief of the Water Supply Planning Section of the Division of Water Resources in DENR, presented the State Water Supply Plan. He explained that the plan was a snapshot of the condition of the State's water resources, prepared every five years by collecting data gathered at the local level. He also noted that a stakeholder process was underway to develop a proposed rule for a Capacity Use Area in Eastern North Carolina. Mr. Young said recent action by the General Assembly to lower the threshold of water withdrawals requiring registration had improved the data available for planning, but that there was still a higher threshold for reporting agricultural withdrawals. The ERC then discussed the possibility of ending the agricultural exemption from the lower reporting threshold. There was also some discussion about the coordination of industry recruitment and water re-use initiatives with the water supply planning process.

Fish kills

Mark Hale, an Environmental Biologist with the Environmental Sciences Branch of the Water Quality Section of the Division of Water Quality in DENR, reported that there had not been a large number of fish kills in the preceding year.

River Herring Fishery Management Plan

The ERC heard a report on the draft River Herring Fishery Management Plan from Preston Pate, Director of the Division of Marine Fisheries in DENR. The ERC deferred

detailed consideration of the plan to the Joint Legislative Commission on Seafood and Aquaculture.

Environmental education

Anne Taylor, Director of the Office of Environmental Education in DENR, told the ERC that all environmental education grant moneys for this year are being used to rebuild libraries damaged or destroyed by hurricane-related floods.

Leaking Underground Storage Tank Cleanup Program

Burrie V. Boshoff, Section Chief of the Underground Storage Tank Section in the Division of Waste Management in DENR, reported on the Leaking Underground Storage Tank Cleanup Program. The cleanup funds for both commercial and non-commercial sites showed positive balances. ERC members asked whether this program would ever completely finish its work, or if new leaks would make this impossible.

Environmental Management Commission

Dr. David H. Moreau, Chair of the Environmental Management Commission (EMC), reported on the EMC's recent activities and gave an update on controversies surrounding air quality measures. The issue of whether complainants could appeal a finding of no-violation of the EMC's rules on odor from animal waste management systems was addressed, with DENR representatives stating that in their opinion, complainants did not have the right to appeal. Representative Hackney commented that statutory guidance may be needed to provide a remedy to this.

Revised best management practices (BMPs) for animal waste management systems

David S. Vogel, Director of the Division of Soil and Water Conservation in DENR, reported on revisions to the emergency BMPs for animal waste management systems adopted by the Soil and Water Conservation Commission following the 1999 hurricanes. He said the revisions had been made in response to complaints that the original emergency BMPs were not sufficiently protective of water quality. The environmental groups that had challenged the original emergency BMPs supported the revised BMPs.

Allocations from the Parks and Recreation and Natural Heritage Trust Funds

Philip K. McKnelly, Director of the Division of Parks and Recreation in DENR, reported on allocations from the Parks and Recreation Trust Fund and the Natural Heritage Trust Fund. ERC members asked about the impact of budget cuts, and Mr. McKnelly responded that the cuts had not impacted the funds, but had impacted resources available to cover operating costs. In discussing natural resource inventories conducted under the Natural Heritage Program, Mr. McKnelly noted that the inventories should be updated periodically, but money is not always available for this.

Cullasaja River

Mr. McKnelly also presented information on the feasibility of designating the portion of the Cullasaja River that borders the Nantahala National Forest as part of the North Carolina Natural and Scenic Rivers System. There was interest in voting to recommend a bill to make the designation, but the Chairs decided to delay such action until after

hearing objections from the Town of Highlands and an opinion from the Attorney General's Office on the matter.

Acquisition of additional property for Lake James State Park

Mr. McKnelly reported on actions by DENR to negotiate the purchase of additional property for Lake James State Park. He said the acquisition would greatly enhance the value of the park. He was not able to provide detailed information on the potential purchase, due to the fact that negotiations were still underway.

February 17, 2000

Water quality

William E. Holman, Secretary of Environment and Natural Resources, reported to the ERC on current water quality issues. These included pollution from animal waste, municipal waste, and nutrients from fertilizer used to melt ice and snow. Mr. Holman noted that temporary rulemaking to require buffers along the Catawba and Cape Fear Rivers was progressing with the input of stakeholders. ERC members expressed concerns that animal operations and municipal treatment plants may not face equal enforcement actions. A request was made that reports on compliance with water quality laws include better information on the types of enforcement actions taken and the volumes of the discharges involved.

Air quality

Mr. Holman and Brock M. Nicholson, Chief of the Planning Section of the Division of Air Quality in DENR, presented the Governor's draft clean air plan and an update on rulemaking to reduce emissions from utilities and other major point sources. There was some discussion about alternative energy sources and efforts to cooperate with other states to reduce air pollution that is transported across state lines. Daniel F. McLawhorn, DENR General Counsel, gave updates on various legal actions and rulemaking steps at the federal and State levels that affect air quality controls. Janet D'Ignazio, Chief Planning and Environmental Officer for the Department of Transportation, explained the process of determining conformity of transportation plans with federal air quality standards. She noted that federal money for transportation improvements can be withheld if an area cannot show how its transportation plans are compatible with achieving federal air quality standards.

Atmospheric deposition of nitrogen

George C. Murray, Chief of the Ambient Air Monitoring Section of the Division of Air Quality in DENR, and Dr. Viney P. Aneja, Professor in the Department of Marine, Earth, and Atmospheric Sciences at North Carolina State University, gave an update on research on the atmospheric deposition of nitrogen. They said nitrogen oxides (NOx) from power plants and automobiles and ammonia from animal waste management systems are the major sources of nitrogen deposited in estuaries from the air.

Dry-cleaning Solvent Cleanup Program

Bruce I. Nicholson, Head of the Special Remediation Branch in the Superfund Section of the Division of Waste Management in DENR, explained that the current dry-cleaning solvent cleanup program doesn't work. This is because obtaining environmental insurance is a requirement for accessing the fund, and this insurance has since become unavailable. In addition, the program does not have enough funding to meet the need for cleanups. Mr. Nicholson noted that studies indicate that 95% of dry-cleaning facilities established prior to 1990 and 60% of facilities established after 1990 may be contaminated. Senator Odom requested specific legislative recommendations for how to make the dry-cleaning solvent cleanup program work.

Stormwater management

Coleen Sullins, Section Chief of the Water Quality Section of the Division of Water Quality in DENR, reported on the implementation of stormwater runoff rules and programs, including new federal standards that will require smaller municipalities to manage stormwater. This presentation was followed by a discussion of issues related to the outcome of the *Smith Chapel Baptist Church v. City of Durham* case, in which the Supreme Court of North Carolina agreed with the church's challenge to the city's authority to levy a fee to cover the administration of its stormwater program. Rick A. Zechini, Assistant Commission Counsel, presented background information on the case, and Andrew L. Romanet, Jr., General Counsel to the North Carolina League of Municipalities, spoke about the potential impact of the decision on municipal governments. The ERC then discussed recommending legislation to clarify that local governments have the authority to levy fees to administer their stormwater programs.

Coastal water quality

Donna D. Moffitt, Director of the Division of Coastal Management in DENR, reported on rulemaking by the Coastal Resources Commission (CRC) to require the preservation of 30 foot vegetated buffers along rivers and streams throughout the coastal counties in order to protect water quality. She noted that the 30 foot buffer rule was a substitute for a more ambitious plan to require wider buffers and expand the area subject to the permitting requirements of the CRC under the Coastal Area Management Act. The more controversial plan was opposed by many local governments, and the CRC convened the North Carolina Estuarine Shoreline Protection Stakeholders Group to develop an alternative proposal. Eugene B. Tomlinson, Chair of this stakeholder group, stated that coastal water quality protection is the responsibility of everyone, not just those who live in the coastal counties. The stakeholder group's recommendations include extending riparian buffer protection and land-use planning requirements upstream from the coastal counties.

Water quality in drinking water wells

Dr. Rick L. Langley, Medical Epidemiologist in the Occupational and Environmental Epidemiology Branch of the Division of Epidemiology in the Department of Health and Human Services, and Arthur Mouberry, Chief of the Groundwater Section of the Division of Water Quality in DENR, reported on the contamination of groundwater by methyl tertiary-butyl ether (MTBE). They reported that 6-9% of all North Carolina drinking water wells are contaminated by MTBE to some degree and noted that the Environmental Management Commission (EMC) was acting to lower the standard for MTBE in drinking water. There was significant discussion about how the standard for contamination was set and the practical effect of the standard. ERC members also asked how many people had been made ill in North Carolina from drinking MTBE-contaminated drinking water. This information was not available.

Linda C. Sewall, Director of the Division of Environmental Health in DENR, reported on broader issues related to the quality of drinking water from wells. She recommended establishing a statewide program for well inspections.

Straight Pipe Elimination Program

Terrell Jones, Supervisor of the Wastewater Discharge Elimination (WaDE) Program in the Onsite Wastewater Services Branch of the Onsite Wastewater Section of the Division of Environmental Health in DENR, gave a report on the WaDE program. This program is also known as the straight pipe elimination program. He explained that a straight pipe could be a system that pipes all household sewage directly into a stream, a bypass of a septic tank for gray water, or a malfunctioning septic tank. He described the program and said that it could be much more efficient if it were consolidated, rather than administered by each county separately. ERC members requested more detailed information on the results of the program and the cost to eliminate each straight pipe.

March 16, 2000

Straight Pipe Elimination Program (continued from February 17, 2000)

Terrell Jones, Supervisor of the Wastewater Discharge Elimination (WaDE) Program in the Onsite Wastewater Services Branch of the Onsite Wastewater Section of the Division of Environmental Health in DENR, followed up on his previous presentation to the ERC with additional information on how many installations and repairs the WaDE program had achieved. Senator Odom requested specific recommendations on how to improve the program's effectiveness.

Staff retention in DENR

Michael Williamson, Deputy Secretary for Operations in DENR, and Carolyn W. Anderson, Principal Analyst for Environmental Affairs in the Environmental Services Section of Carolina Power & Light Company, Inc., reported on issues related to the retention of environmental engineers in DENR. They stated that a permit reform team, of which Ms. Anderson was a member, had identified high turnover rates (10-20%) in DENR as an obstacle to more efficient permitting programs. Low salaries, a complicated personnel system, lack of training opportunities, and management problems were cited as reasons for the high turnover rate. Mr. Williamson said DENR was addressing these problems by working with the Office of State Personnel to get a one-range adjustment to the salaries of environmental engineers, as well as providing training opportunities, conducting employee surveys, and training supervisors. ERC members expressed skepticism that a one-range salary adjustment would significantly improve the situation.

Stormwater (continued from February 17, 2000)

Kimberly L. Hibbard, Associate General Counsel for the North Carolina League of Municipalities, and Linda A. Miles, City Attorney for the City of Greensboro, spoke about the impact of the *Smith Chapel* decision on municipalities. Ms. Hibbard noted that the issue concerned smaller cities as well as larger ones, due to new federal stormwater management requirements. Senator Horton noted that a memorandum explaining why the City of Durham's use of stormwater fees was challenged had been distributed.

Water quality funds

David McNaught, Executive Director of the Clean Water Management Trust Fund; David B. Freeman, Jr., Executive Director of the Cape Fear River Assembly, Inc.; and Richard N. Hicks, Chair of the Lower Neuse Basin Association, Inc. gave presentations on how their organizations have spent funds appropriated by the General Assembly for water quality improvement efforts. Mr. Freeman and Mr. Hicks said their organizations had used State funds to leverage additional contributions from other sources for water quality monitoring, studies, and improvements to facilities that discharge into surface waters.

Air quality

Daniel F. McLawhorn, General Counsel for DENR, gave an update on the NOx SIP Call lawsuit, in which North Carolina and other states had challenged the federal Environmental Protection Agency (EPA) requirement that they implement plans to make

specific reductions in nitrogen oxide (NO_x) emissions from point sources in order to reduce the transport of NO_x to areas with air quality problems in northeastern states. Mr. McLawhorn said the EPA had prevailed on most points, but not all, and it would probably take two years for the required plans to be implemented. He also said an appeal to the Supreme Court was likely. Mr. McLawhorn stated that despite the lawsuit, the Environmental Management Commission was moving forward to implement the State's own clean air plan. He added that the EPA could attempt to achieve emissions reductions similar to those sought under the NO_x SIP Call by other means.

Alan W. Klimek, Director of the Division of Air Quality in DENR, and Heather J. Hildebrandt, an Environmental Engineer with the Mobile Sources Compliance Branch in the Technical Services Section of the Division of Air Quality in DENR, presented recommended incentives to increase the use of alternative-fueled and low-emission cars and trucks in privately-owned fleets. These included tax credit and loan subsidies for the purchase of such vehicles. A fiscal analysis of the proposals was requested.

Open burning

David Jarman, Fire Chief of the Division of Forest Resources in DENR, gave a presentation on procedures for issuing open burning permits on five or more acres near woodlands under DENR's protection. Mr. Jarman said there had been smoke problems from the burning of organic soils in drought conditions along the coast and said DENR was considering canceling open burning permits in drought conditions.

Inactive Hazardous Sites Program

Charlotte Jesnick, Head of the Inactive Hazardous Sites Program in the Superfund Section of the Division of Waste Management in DENR, gave a report on the inactive hazardous sites program. She noted that old landfills had emerged as a potential problem, posing risks to drinking water wells nearby and problems with the migration of gasses from sites that have been paved over. She said recent legislation that authorized the privatization of oversight functions at voluntary cleanup sites and the use of land-use restrictions instead of pristine cleanups where appropriate had helped the program stretch its resources and be more effective.

Brownfields

Bruce I. Nicholson, Head of the Special Remediation Branch in the Superfund Section of the Division of Waste Management in DENR, and Tom Warshauer, Manager of the Employment and Business Services Division for the City of Charlotte, reported on the Brownfields Program. Mr. Nicholson explained that businesses that enter into brownfields agreements with the State receive protection from liability for contamination in exchange for conducting partial cleanups and accepting land-use restrictions on their property to protect public health and the environment from any remaining pollution. He further explained that the liability protection is only available for parties not originally responsible for the pollution, and that the program removes disincentives for the redevelopment of blighted urban areas. Mr. Nicholson noted that a provision of the Bill Lee Act that requires the State to charge a fee to cover the State's cost for administering a brownfield agreement could be a disincentive to using the brownfields program. He noted

that the provision had not yet been used, because all funds used to administer brownfields agreements up to this point have come from the federal government. Mr. Nicholson also stated that an alternative way to fund the Brownfields Program would be to place a small fee on greenfield development.

Mr. Warshauer also recommended the establishment of an impact tax on greenfield development to fund the Brownfields Program. He explained that charging a fee would make brownfield agreements unaffordable to small businesses seeking to redevelop blighted properties. Mr. Washauer gave several examples of brownfields agreements that have successfully been completed in Charlotte.

ERC members expressed concern that the State had not approved more brownfields agreements. Mr. Nicholson responded that the program had not yet received any State funding, and that the limited federal funding for the program may soon be terminated. The concept of providing property tax waivers for redeveloped properties was also discussed.

Adopt-a-Beach Program

Michael J. Lopazanski, Coastal and Ocean Policy Analyst for the Division of Coastal Management in DENR, presented the annual report on the Adopt-A-Beach Program. He said the program was popular, but had received no funding for several years. ERC members commented that legislation should be introduced to drop the annual reporting requirement if the General Assembly does not appropriate money for the program.

Animal waste lagoons

David S. Vogel, Director of the Division of Soil and Water Conservation in DENR, presented an interim report on the required inventory of inactive lagoons and ranking of the extent to which each lagoon poses a threat to public health, the environment, or the State's natural resources. He said the final report was not yet finished due to a recent snowstorm. Mr. Vogel said 1,031 inactive lagoons had been identified so far, 628 of which had been visited by DENR staff. He said the risk rankings of the lagoons would be based on the risk to groundwater, concentrations of nutrients and contaminants in the lagoons, and the strength of the lagoon embankments. He said a final report should be ready by April 25, 2000.

Mr. Vogel also gave an update on the implementation of the State's program to buy out intensive swine operations in the floodplain. He said all conservation easements acquired through the buy-out program would require soil and water conservation plans and the restoration of the sites. He added that an advisory panel would choose among the 82 applications for buy-outs at 79 sites. Funding all the applications would require \$50 million, and only \$5 million is available for the program. In response to questions about why the buy-out program applies only to swine operations and not poultry operations, Mr. Vogel said new swine operations were prevented by law from locating in the floodplain, which is not the case for other types of animal operations.

North Carolina Water Quality Work Group

Dr. William Kreutzberger, Chair of the North Carolina Water Quality Work Group, and Dr. William T. Showers, Associate Professor in the Department of Marine, Earth, and Atmospheric Sciences at North Carolina State University, reported on the progress of the North Carolina Water Quality Work Group. They explained that the rivernet monitors the Work Group was installing would provide an effective and efficient way to collect and disseminate data, as well as instantly detect spills. ERC members commented that all the different groups monitoring water quality should coordinate their work.

Proper maintenance of septic systems

Malcolm Blalock, Deputy Director of the Division of Environmental Health in DENR, reported on recommendations from the Commission for Health Services regarding the proper maintenance of septic tanks. The recommendations call for a pilot project on septic tank location notification and the certification of septic tank installers. ERC members asked that a consensus recommendation be reached with the participation of the North Carolina Septic Tank Association prior to the next ERC meeting.

Tax credit for nonpolluting dry-cleaning equipment

Marvin D. Musselwhite, Attorney for Poyner & Spruill, LLP, representing Micell Technologies, Inc., discussed the concept of providing a tax credit for investments in dry-cleaning technologies that do not use a hazardous substance as a solvent. ERC members requested a fiscal analysis of the proposal.

April 6, 2000

Straight Pipe Elimination Program (continued from March 16, 2000); other updates

William E. Holman, Secretary of Environment and Natural Resources, stated that he had not yet had time to review recommendations on improving the straight pipe elimination program. Instead, he gave an update on DENR's air quality activities; mentioned that a plan had been developed in response to the Governor's call to find a way to preserve one million acres of open space in the next ten years; commented on ongoing staff retention problems; and noted that the new North Carolina Museum of Natural Science would soon have its grand opening.

Update on litigation against former Division of Water Quality Director

Daniel F. McLawhorn, General Counsel for DENR, provided an update on the lawsuit filed by Purvis Farms against Preston Howard, former Director of the Division of Water Quality in DENR. Mr. McLawhorn noted that additional protection for individuals sued for actions undertaken as part of their DENR duties could be provided by an act of the General Assembly declaring that in a personal suit that fails, the suing entity must pay the private individual's attorney fees.

Wastewater Collection System Permit Program

Coleen Sullins, Chief of the Water Quality Section of the Division of Water Quality in DENR, presented a status report on progress in developing and implementing a wastewater collection system permit program. She described the problems that typically cause breaks in collection system pipes and noted that many could be prevented with proper maintenance. She explained that minimum design criteria had been established to fast-track the permitting process. She said that under the holistic collection system permitting process required by House Bill 1160, a system could be "deemed permitted" if it met a series of requirements related to planning and maintenance.

Wetlands Stream Management Advisory Committee

Robin W. Smith, Assistant Secretary for Natural Resources, explained that the Wetlands Stream Management Advisory Committee, a stakeholder group that had been working to improve wetlands and stream regulation, had come to an impasse as a result of a lawsuit challenging the statutory authority of the State's wetlands protection program. She said the participation of some committee members in the lawsuit had reduced the interest of other committee members in continuing discussions. Ms. Smith said DENR was currently trying to refocus the committee's work on less controversial technical issues in the short term.

List of impaired waters

Ms. Sullins presented a list of impaired waters in the State that was required by the federal Environmental Protection Agency (EPA). She explained the factors that can lead to the placement of a waterway on the list, as well as how a waterway can be removed from the list. She said sedimentation and fecal coliform bacteria were major causes of impairment, and that a significant number of waters were listed based on biological impairment despite the absence of any obvious cause. Ms. Sullins said urban and

agricultural runoff were the biggest sources of impairment. ERC members asked several questions about the process of listing waters and the sources of impairment on specific bodies of water. Members also expressed concern that agriculture may be unfairly targeted by water quality laws and enforcement, considering that it appeared to account for only 27% of the instances of impairment.

Sedimentation Control Program

Mell F. Nevils, Jr., Chief of the Division of Land Resources in DENR, gave a report on the role of sedimentation control in protecting water quality. He said the numbers of sediment control projects and disturbed acres were increasing. He reported that his staff is now inspecting sites more frequently than ever before and has recorded an increase in off-site sedimentation from disturbed sites.

ERC members raised concerns about a mining permit that had been approved with no notice to neighbors and requested that legislation be drafted to address the problem.

Upper Neuse River Basin Association, Inc.

Lisa Martin, Executive Director of the Upper Neuse River Basin Association, Inc., reported on the activities of the Association, which received an appropriation from the General Assembly to develop an Upper Neuse River Watershed Management Plan. Ms. Martin reported that the association consisted of local governments with land-use jurisdiction in the Falls Lake Watershed, and said the focus of the group was on protecting drinking water quality. ERC members requested that Ms. Martin provide a detailed accounting of how the appropriation to the association had been spent.

Solid waste

Dexter R. Matthews, Chief of the Solid Waste Section of the Division of Waste Management in DENR, presented reports on the management of white goods, the condition of the scrap tire disposal account, and the status of solid waste management efforts in the State. He said the white goods program had been very successful, and that the State was now recycling 54% of its scrap tires. Senator Odom requested that DENR work with ERC staff to develop legislation to remove sunsets on the scrap tire and white goods programs, and also make provisions for reducing the fees that support the programs. Mr. Matthews noted that the State is still making negative progress towards its solid waste reduction goal, and recommended the following measures to address this: requiring "pay-as-you-throw" programs; requiring buy-recycled programs; and establishing a statewide tipping fee.

Heather E. Sandner, Waste Management Analyst for the Community and Business Assistance Section of the Division of Pollution Prevention and Environmental Assistance (DPPEA) in DENR, gave an annual report on the amounts and types of materials and supplies with recycled content that were purchased by State agencies during the previous fiscal year. Ms. Sandner reported that the information DPPEA had received from other State agencies demonstrated declining support for recycling and buying recycled products by top managers. There was discussion about how to make agencies more committed to recycling and buying recycled products.

April 25, 2000

Environmental Management Commission

Dr. David H. Moreau, Chair of the Environmental Management Commission (EMC), reported on recent activities of the EMC, including updates on measures to improve air quality, groundwater quality, and surface water quality. The EMC had sent three options for reducing NO_x emissions to public hearing, but further actions would be contingent on the outcome of unresolved lawsuits. Groundwater actions included adopting minimum management practices at dry-cleaning operations and the revision of groundwater standards for several contaminants. Surface water activities included studying under what circumstances privately owned wastewater treatment systems should be required to connect to publicly owned wastewater treatment systems. Dr. Moreau said a survey revealed strong support for requiring the connection of non-compliant systems, but privately-owned systems were not always the worst offenders and shouldn't necessarily be targeted. He also noted that a stakeholder process was underway to develop a statewide program for stormwater management, and that the EMC had sent out a notice of its intent to establish rules to initiate the conversion of animal waste lagoons.

ERC members raised questions about how North Carolina compares to other states in terms of air quality and air quality protection measures. DENR staff said they could provide additional information on this topic. Members also discussed who would bear the cost of emissions reductions at point sources, the ratio of emissions reductions from point sources and mobile sources under federal and State initiatives, the potential impact of deregulation on air quality, and alternative sewage treatment and disposal methods.

Inactive animal waste lagoons (continued from March 16, 2000)

David S. Vogel, Director of the Division of Soil and Water Conservation in DENR, explained how his division and the Division of Water Quality had worked together to establish an inventory and risk-ranking of inactive animal waste lagoons. He noted that the rankings were based on physical assessments rather than chemical analysis of lagoon contents or groundwater sampling. Mr. Vogel reported that out of 1142 inactive lagoons identified, 39 were determined to pose a high risk for breaches or overflows that could contaminate surface waters; 1060 posed a medium risk for breaches, overflows, or leaks to groundwater; and 43 posed a low risk of contaminating either surface or groundwater. He recommended immediate action to close the high-risk lagoons and additional analysis to more precisely assess the dangers posed by medium-risk lagoons prior to proceeding with more closures.

ERC members raised questions about why the inactive lagoons had been abandoned, why an inactive lagoon would overflow, the scientific basis for identifying the high-risk lagoons, potential closure methods, and why the public should pay for lagoon closure. ERC members also asked for the arrangement of an informal tour of some of the inactive lagoons.

Discharges of untreated and partially treated municipal and domestic wastewater

William J. Reid, Assistant Chief of the Water Quality Section of the Division of Water Quality in DENR, reported on discharges of untreated and partially treated municipal and domestic wastewater and recommendations to reduce these discharges. Mr. Reid noted that collection system inflow and infiltration was the biggest contributor to spills, and that grease and oil in the collection systems was also a major problem. He said that ongoing efforts in establishing collection system permits, tougher enforcement, and educational efforts seek to reduce these problems. He added that grants and loans provided by the Clean Water Bonds issued in 1998 have also been important in helping upgrade wastewater facilities. Mr. Reid noted that the Division had seen a 5% increase in compliance by municipal and domestic wastewater treatment works from 1997 to 1999. His recommendations included providing a regular funding source for grants to municipalities to upgrade their treatment plants. ERC members then debated why people across the state should subsidize the repair of treatment works that have not been properly maintained.

Leaking Petroleum Underground Storage Tank Cleanup Program

Burrie V. Boshoff, Section Chief of the Underground Storage Tank Section of the Division of Waste Management in DENR, presented a report on the fiscal condition and cleanup record of the Leaking Petroleum Underground Storage Tank Program. The funds for the cleanup of both commercial and noncommercial sites with leaks have positive balances, and there has been a major increase in the number of sites closed relative to the number of new sites discovered. Mr. Boshoff recommended legislative action to authorize the program to pay consultants for cleanup results rather than cleanup systems. ERC members raised questions about the need for assessment at low-risk sites and expressed concern about leaks from new and upgraded tanks.

Dry-cleaning operations

Rick A. Zechini, Assistant Commission Counsel, presented proposed amendments to previously introduced dry-cleaning solvent cleanup legislation. Mr. Zechini explained that the proposed amendments would earmark additional sales tax revenue from dry-cleaning services to the Dry-Cleaning Solvent Cleanup Fund and would repeal an insurance requirement for accessing the fund. Denny Shaffer, Representative of the North Carolina Association of Launderers and Cleaners, supported the proposed amendments. Despite concerns that the earmarked tax would apply even to cleaners using solvents that do not contain hazardous substances, the ERC voted to recommend the amendments to the General Assembly.

Mr. Zechini also explained proposed legislation to establish a tax credit of up to 35% for investment in dry-cleaning and wet-cleaning equipment that does not use a hazardous substance as a solvent. Despite some concern that the credit may be too large, the ERC voted to recommend the legislation to the General Assembly.

Floodplain management

Robin W. Smith, Assistant Secretary for Environmental Protection in DENR, presented a proposal to expand the scope of the State's floodway statute to include the

entire 100-year floodplain and adopt minimum standards for floodplain development. The proposal would make a local government's eligibility for State infrastructure assistance contingent upon the adoption of ordinances consistent with State standards. In response to concerns about using existing floodplain maps, which are often out-of-date, Ms. Smith said DENR was addressing that problem as a separate issue. She noted that better maps may be used as they are developed. Questions were also raised about the potential impact of the proposal on the availability of flood insurance. ERC staff was then directed to work with DENR to draft legislation reflecting the proposal.

Maintenance of septic tanks (continued from March 16, 2000)

Linda C. Sewall, Director of the Division of Environmental Health in DENR, reviewed recommendations previously presented to the ERC by the Commission for Health Services (CHS) for the maintenance of septic tanks. She noted that a recommendation to certify septic tank installers had aroused particular interest, and the ERC had requested that the septic tank industry be consulted about this recommendation. She said all stakeholders were in favor of certifying or licensing septic tank installers, but not through programs administered by local Health Departments, as recommended by CHS. She said the other options were to establish a certification program administered by a State agency or to establish a licensing program administered by an independent board. Doug Lassiter, Legislative Liaison for the North Carolina Septic Tank Association, spoke in support of licensing by an independent board. ERC members expressed interest in having legislative proposals drafted to reflect these options.

Forestry issues related to water quality

William E. Holman, Secretary of Environment and Natural Resources, said the report on improving compliance with Forest Practice Guidelines related to water quality had not yet been completed to everyone's satisfaction, but that there was consensus on some points. These included an acknowledgement of the importance of all types of forest lands to water quality. He also noted that there was increasing interest in sustainable forestry, and recommended that the ERC hear the results of a current study on the impact of chip mills when that study is complete.

In response to a comment that forestry officials often don't visit sites during harvesting, Senator Kinnaird circulated a bill she introduced in the 1999 Regular Session that would require timber harvesters to notify DENR 30 days prior to conducting a timber harvest. Other members raised questions about the feasibility of the proposal and noted that it would have to include a personal-use exemption to be workable.

Brownfields

Edmund P. Regan, Deputy Director of the North Carolina Association of County Commissioners, and Kimberly L. Hibbard, Associate General Counsel for the North Carolina League of Municipalities, spoke in support of a legislative proposal to encourage the redevelopment of brownfields by providing temporary property tax abatements for improvements to brownfield sites. The ERC voted to recommend the proposal to the General Assembly.

Air quality

Gene Cella, Assistant Commissioner of the Division of Motor Vehicles in the Department of Transportation, reported on progress in ensuring that the State's inspection and maintenance program is effectively administered. Mr. Cella reported that the federal Environmental Protection Agency had sent a letter stating that appropriate actions had been taken to correct problems with the program.

William E. Holman, Secretary of Environment and Natural Resources, reported on DENR's recommendation for fees and technology for the enhanced emissions inspection and maintenance program set out in SL 1999-328, Sec. 3.10. The recommendations included an increase of less than \$5 for both the existing program and the enhanced program and an amendment to allow the use of an on-board diagnostic (OBD) test rather than the acceleration simulation mode (ASM) test specified in the 1999 legislation. Mr. Holman noted that DENR was still in negotiations with service station representatives about the fee, and they would come back to the ERC with additional information on these recommendations. It was noted that SL 1999-328 stated that the enhanced emissions inspection program would sunset if the General Assembly did not take action in the 2000 Regular Session to adjust the emissions inspection fee.

Janet D'Ignazio, Chief Planning and Environmental Officer for the Department of Transportation, discussed the issue of conformity of transportation plans with air quality standards and presented two legislative proposals. The first was to provide for the establishment of voluntary rural planning organizations (RPOs), through which counties could engage in joint transportation planning, and the second was to remove federal congestion mitigation and air quality improvement (CMAQ) funds from the State's regional distribution formula. The ERC voted to recommend both proposals to the General Assembly.

Parks and conservation

Rick A. Zechini, Assistant Commission Counsel, provided background information on the issue of whether the portion of the Cullasaja River that borders the Nantahala National Forest should be designated part of the State's natural and scenic river system. Philip K. McKnelly, Director of the Division of Parks and Recreation, stated his agency's support for the designation. Allen L. Trott, Mayor of the Town of Highlands, and Richard Betts, Highland Town Administrator, spoke of their concern that the designation may impede their ability to obtain a permit to expand the town's wastewater treatment facility. DENR representatives said their interpretation of an Attorney General's opinion on the issue was that the designation would impose no additional requirements that would affect the town's ability to get a permit for the expansion of the facility. Margaret R. Jones, President of Save Our Rivers, Inc., and the North Carolina Watershed Council, spoke about the natural and scenic values that led her organizations to advocate for the natural and scenic designation. Daniel F. McLawhorn, General Counsel for DENR, said DENR would be comfortable adding a section to the legislation that clarifies that the designation would impose no new water quality requirements. The representatives from the Town of Highlands agreed to this proposal, and the ERC voted to recommend the legislation, with the additional language, to the General Assembly.

Mr. McLawhorn and Mr. McKnelly presented additional legislative proposals to authorize DENR to remove abandoned vessels from State waterways and to establish the Bullhead Mountain and Lea Island State Natural Areas as new units of the State Park System. The ERC voted to recommend all three proposals to the General Assembly.

May 4, 2000

Maintenance of septic tanks (continued from April 25, 2000)

Linda C. Sewall, Director of the Division of Environmental Health in DENR, reviewed three proposals related to the Commission for Health Services (CHS) recommendation that septic tank installers be certified. She noted that the original CHS recommendation called for the certification to be carried out by local health departments, which was opposed by both the septic tank industry and the local health departments. Ms. Sewall then explained two alternative proposals, one involving certification by DENR and the other involving licensing by an independent board. Doug Lassiter, Legislative Liaison for the North Carolina Septic Tank Association, spoke in favor of licensing by an independent board. Ms. Sewall said that option was acceptable to DENR. The Chairs directed staff to prepare a bill to implement the licensing board option.

Stormwater management (continued from March 16, 2000)

Rick A. Zechini, Assistant Commission Counsel, explained a legislative proposal that would specifically authorize cities to collect fees for the administration of their stormwater management programs. Kimberly L. Hibbard, Associate General Counsel for the North Carolina League of Municipalities, and James B. Blackburn, III, General Counsel for the North Carolina Association of County Commissioners, spoke in support of the proposal. Materials critical of the proposal were also distributed. The ERC then voted to recommend the proposal to the General Assembly.

Mountain-to-Sea Trail

Philip K. McKnelly presented a legislative proposal to authorize the State to acquire land to complete the proposed Mountains-to-Sea Trail. Senator Howard Lee spoke in support of the proposal. The ERC then voted to recommend the proposal to the General Assembly.

White goods and scrap tires

Rick A. Zechini, Assistant Commission Counsel, explained a legislative proposal that would eliminate the sunset on the statutes governing the management of discarded white goods. The ERC voted to recommend the proposal to the General Assembly, on the condition that the legislative proposal be modified to include provisions addressing the disposal of scrap tires.

Moratorium on billboards

Representative Hackney suggested that the ERC recommend a proposal to extend the current moratorium on billboard construction along Interstate 40 from Orange County to Wilmington. The Chairs said this matter would be taken up at the May 9, 2000 meeting of the ERC.

Recovery of attorneys' fees when a State employee is sued individually

George F. Givens, Commission Counsel, explained a legislative proposal that would provide for the recovery of attorneys' fees when a State employee is sued individually in connection with the enforcement of environmental laws. Questions were raised about the scope and general advisability of the proposal. The Chairs said the draft would be modified and the issue would be addressed again at the May 9, 2000 meeting of the ERC.

Authorize DENR to delegate responsibilities to local governments

Robin W. Smith, Assistant Secretary for Environmental Protection in DENR, presented a proposal to grant DENR and various commissions responsible for the protection of public health and the environment a general authorization to delegate administrative responsibilities for certain programs to qualified local governments. Questions were raised about the definition of a "qualified local government." The Chairs said the proposal would be further developed and brought before the ERC again at its May 9, 2000 meeting.

Floodplain regulation (continued from April 25, 2000)

Ms. Smith also presented a legislative proposal to regulate development in floodplains. The proposal would set minimum standards for development in the 100-year floodplain and authorize local governments to adopt floodplain development ordinances. Failure to adopt a floodplain ordinance consistent with State standards would make a local government ineligible for State disaster relief and State grants and loans for infrastructure projects. Philip S. Letsinger, State Coordinator for the National Flood Insurance Program in the Division of Emergency Management of the Department of Crime Control and Public Safety, spoke in support of the proposal and said it would not negatively impact the availability of flood insurance. Bill Hale of the Department of Insurance said the proposal would also have no effect on the availability of homeowners' insurance. Questions were raised about the accuracy of the maps used to delineate 100-year floodplains. Ms. Smith responded that the proposal provided for the use of newer and better maps as they become available. The Chairs said this proposal would be brought before the ERC again at its May 9, 2000 meeting.

Water quality monitoring and research

Larry W. Ausley, Supervisor of the Ecosystems Unit in the Environmental Sciences Branch of the Division of Water Quality in DENR, gave a report on the water quality monitoring and research conducted by various entities across the State. Questions were raised about the degree to which these entities cooperate with each other. Dr. William T. Showers, Associate Professor in the Department of Marine, Earth, and Atmospheric Sciences at North Carolina State University, said the North Carolina Water Quality Work Group would develop a "white paper" detailing current gaps in water quality research and discussing coordination and cooperation among researchers by the end of the summer.

May 9, 2000

Fraud in tank-tightness testing

Loy Ingold, Special Agent for the Diversion and Environmental Crimes Unit of the State Bureau of Investigation in the Department of Justice, reported to the ERC on indictments and ongoing investigations of potential fraud in petroleum underground storage tank tightness testing. He said there appeared to have been fraud in 1500 tests done between 1995 and 1997 in four states, including North Carolina. In response to questions from ERC members, Mr. Ingold verified that no certification is required for tank tightness testers.

Million Acres Initiative

William E. Holman, Secretary of Environment and Natural Resources, presented a legislative proposal to codify Governor Hunt's goal of preserving one million acres of open space by the year 2010. He said DENR would be the lead agency in coordinating preservation efforts, but local governments would determine the priorities for open space protection in their jurisdictions. ERC members questioned how the initiative would be funded and expressed reservations about the lack of detail in the plan, but voted to recommend the proposal to the General Assembly.

Air quality (continued from April 25, 2000)

Secretary Holman also presented proposed legislation to modify the technology and fees required under the State's automobile emissions inspection program. ERC members raised questions about the level of the fee and the allocation of the proceeds from the fee, and several members said the proposal would need to be further refined before it would be ready for enactment. The ERC then voted to recommend the proposal to the General Assembly.

Environmental Excellence Act

George F. Givens, Commission Counsel, introduced proposed legislation on "environmental excellence program agreements" (EEPAs) by summarizing the work of the Environmental Excellence Act Working Group. The working group, which has been meeting since the 1999 Session of the 1999 General Assembly, is comprised of representatives from DENR, regulated industries, and environmental advocates. The working group attempted to reach a consensus on proposed legislation to give the Secretary of Environment and Natural Resources (Secretary) the authority to enter into EEPAs with interested parties as an alternative to requiring compliance with statutory and regulatory permit requirements. Under an EEPA, the Secretary would agree to replace the permit requirements with an individually tailored agreement designed to give a party the flexibility to try alternative approaches to achieve minimum compliance with environmental standards at a lower cost, achieve greater than minimum compliance, or both. Mr. Givens explained that the working group had failed to reach consensus and noted that the proposal presented to the ERC for its recommendation was the draft originally proposed by representatives of regulated industries.

Members of the working group then explained their positions on the proposed legislation. Preston Howard, representing the Manufacturers and Chemical Industry Council, stated his strong support for the legislation. He also outlined what he viewed as the primary issues in dispute in the working group, including the issue of whether or not EEAs should require the exceedence of statutory and regulatory permit requirements. Mr. Howard said he believed EEAs should not require the exceedence of standard permit requirements.

Daniel F. McLawhorn, General Counsel for DENR, said DENR strongly opposed the proposal and said it may be unconstitutional. Mr. McLawhorn said the proposal would give the Secretary too much power to bypass the rules made by the Environmental Management Commission and laws enacted by the General Assembly. David Knight, representing the Sierra Club and other environmental advocacy organizations, also strongly urged the ERC not to recommend the proposal in its current form.

In the ensuing discussion, some ERC members voiced reservations about addressing this controversial issue during the 1999 Regular Session, given the absence of consensus among the stakeholders and the complicated and far-reaching nature of the proposal. Others said they thought the proposal offered the opportunity for a more cooperative method of achieving environmental compliance. Several members said the substantive committees that would review the proposal could be trusted not to give it a favorable report until its problematic features had been corrected. The ERC then voted to recommend the proposal to the General Assembly.

Leaking petroleum underground storage tanks – exemption from land-use restrictions

George F. Givens, Commission Counsel, explained a legislative proposal that would exempt sites contaminated by leaking petroleum underground storage tanks (USTs) from the land-use restrictions and deed recordation requirements imposed by SL 1999-198 on all contaminated sites remediated to risk-based, rather than pristine, standards. Mr. Givens noted that SL 1999-198 was not intended to apply to UST sites, and that a stakeholder working group had been attempting to come to a consensus on how to address this unintended consequence. He said the working group had not yet reached an agreement.

Representatives from the stakeholder working group then spoke on the proposal. Robin W. Smith, Assistant Secretary for Environmental Protection in DENR, said DENR had not anticipated that SL 1999-198 would affect the UST program, but generally supported the imposition of land-use restrictions and deed recordation requirements on sites that had undergone risk-based cleanups. Ms. Smith also said DENR was willing to continue discussions with representatives of the petroleum marketers to find a compromise. Nat Mund, representing the Conservation Council of North Carolina and other environmental advocacy groups, said he opposed the exemption but was also willing to try to reach a compromise. Doug Howey, representing the Petroleum Marketers Association, spoke in support of the exemption.

Concerns were raised by some members that the proposed exemption could leave prospective property purchasers without sufficient warning of remaining contamination

on some sites. Representative Gibson responded to these concerns by offering an amendment to make the exemption expire September 1, 2001. He said adding the expiration date would ensure that the exemption would not remain indefinitely in the absence of an alternative notice requirement developed by the working group. After adopting this amendment, the ERC voted to recommend the proposal to the General Assembly.

Leaking petroleum underground storage tanks – de minimis exemption from reporting

Mr. Givens then explained a legislative proposal that would exempt from current reporting requirements releases of petroleum of less than 25 gallons that were cleaned up in less than 24 hours and did not cause a sheen on surface waters. After adopting an amendment from Representative Hackney to limit the exemption to cases in which the release did not occur within 100 feet of surface waters, the ERC voted to recommend the proposal to the General Assembly.

Floodplain management (continued from May 4, 2000)

Robin W. Smith, Assistant Secretary for Environmental Protection in DENR, presented proposed legislation to set minimum standards for development in the 100-year floodplain and provide incentives to local governments to adopt floodplain development ordinances. Ms. Smith explained that the proposal had been amended to clarify that a prohibition on uses involving hazardous materials in the 100-year floodplain applied only to uses involving large quantities of the materials. She also noted that the new version provided greater flexibility for the use of innovative methods to map the 100-year floodplain. After raising some questions about how voluntary the adoption of floodplain development ordinances would be for local governments, the ERC voted to recommend the proposal to the General Assembly.

Delegation of authority to local governments (continued from May 4, 2000)

Ms. Smith then presented proposed legislation to authorize DENR and various commissions responsible for the protection of the environment to delegate responsibility for the implementation of certain programs to units of local government. Ms. Smith noted that DENR already delegates the implementation of some programs, including sedimentation control, and that the delegation would take place only at the request of local governments. ERC members raised questions about whether the delegation could present a new burden for local governments and expressed concern that some local governments may choose to exceed DENR's minimum standards. Several members said the proposal would need to be further refined before it would be ready for enactment. The ERC then voted to recommend the proposal to the General Assembly.

Legal representation of State employee sued individually for environmental enforcement

George F. Givens, Commission Counsel, explained two legislative proposals related to the legal representation of state employees who are sued individually in connection with the enforcement of environmental laws. One proposal would provide that the State would, upon request, provide private counsel for a State employee who is alleged to be personally liable for damages for actions taken in the course of the employee's duties to enforce environmental laws. The other proposal would require the court to award

attorney's fees to a State employee who prevails in a lawsuit related to actions taken in the course of the employee's duties to enforce environmental laws. The ERC voted to recommend both of the proposals to the General Assembly and gave staff permission to combine them into a single legislative proposal.

Notice to public of applications for mining permits

Mr. Givens also explained a proposal to broaden the requirement that neighboring property owners be given notice of any application for a mining permit. This proposal was requested by ERC members concerned about a situation in which an applicant had sought a permit for a mining operation on a parcel of land surrounded by other property also owned by the applicant. The applicant was therefore not required to notify neighboring land-owners of the application. The ERC voted to recommend the proposal to the General Assembly.

Licensing of septic tank installers (continued from May 4, 2000)

Linda C. Sewall, Director of the Division of Environmental Health in DENR, and Doug Lassiter, Legislative Liaison for the North Carolina Septic Tank Association, presented proposed legislation that would require on-site wastewater system contractors to be licensed by an independent licensing board. After adopting an amendment from Representative Cox to exclude General Contractors from the licensing requirement, the ERC voted to recommend the proposal to the General Assembly.

Billboard moratorium

Jeff W. Hudson, Assistant Commission Counsel, explained proposed legislation to extend by one year the moratorium on constructing and permitting new billboards along the portion of Interstate Highway 40 from the Orange-Alamance County line to the municipal limits of the City of Wilmington. The proposal had been requested by Representative Hackney at the ERC meeting on May 4, 2000. The Commission voted to recommend the proposal to the General Assembly.

Timber harvest notice (continued from May 4, 2000)

The ERC discussed a proposal presented by Senator Kinnaird at the May 4, 2000 meeting of the ERC to require a person conducting a commercial timber harvest to notify DENR prior to commencing land-disturbing activity related to the harvest. The ERC determined that this issue and other issues related to sustainable timber harvesting should be studied by the ERC in the interim following the 2000 Regular Session of the 1999 General Assembly.

ERC Report to the General Assembly

Hannah Holm, Research Assistant for Environmental Issues, presented the draft report from the ERC to the General Assembly on ERC activities in the interim following the 1999 Regular Session. She asked that the ERC approve the report on the condition that a summary of the current meeting, summaries of all recommended legislation, and edited drafts of all recommended legislation be added to the report. The ERC voted to approve the report with these conditions.

COMMISSION STAFF ACTIVITIES

Planning Meetings

The Commission Counsel held an informal planning meeting prior to each Environmental Review Commission (ERC) meeting in order to facilitate the development of the agenda for the meetings and to receive input from interested persons regarding the future work of the ERC. These meetings were open to any person who wished to participate. The planning meetings were typically attended by representatives of State agencies, the regulated community, environmental advocacy groups, and local governments. Planning meetings were held on 21 October 1999, 8 November 1999, 6 December 1999, 10 January 2000, 7 February 2000, 6 March 2000, 29 March 2000, and 18 April 2000.

Working Groups

The Commission Counsel holds meetings of interested parties on specific topics upon request. The purpose of these meetings is to gather information and facilitate the exchange of viewpoints on issues related to environmental and natural resources law and policy that are, or may become, the subject of legislative proposals to be considered by the ERC or the General Assembly. The working group meetings are open to any person who wishes to participate. The meetings are typically attended by representatives of State agencies, the regulated community, environmental advocacy groups, local governments, and the Attorney General's office. A primary goal of these working groups is to identify and resolve issues and, whenever possible, to develop compromise legislation on a consensus basis. During the period April 1999 through May 2000, the Commission Counsel conducted working groups on two matters: proposed "environmental excellence" legislation and issues related to the Leaking Petroleum Underground Storage Tank Program.

Environmental Excellence Agreements

Prior to the public bill introduction deadline of the 1999 Regular Session, representatives of the North Carolina Citizens for Business and Industry and other groups representing the regulated community asked various members of the General Assembly to introduce bills in both houses entitled "A Bill to Establish a Voluntary Program Regarding Environmental Excellence Program Agreements." Although substantive legislation was not introduced, Senate Bill 1133 and House Bill 1201 were introduced as blank bills, and the Commission Counsel was asked to convene a working group to discuss the proposal developed by the industry groups.

Meetings of the working group were held on 15 April 1999, 23 April 1999, 3 May 1999, 19 May 1999, 17 May 1999, 24 May, 1999, 1 June 1999, 7 June 1999, 14 June 1999, 21 June 1999, 21 June 1999, 28 June 1999, 16 July 1999 (telephone conference call), 20 July 1999, 10 November 1999, 7 February 2000, 6 March 2000, 14 March 2000, 14 March 2000, 14 March 2000, 29 March 2000, 7 April 2000, 1 May 2000, and 5 May 2000 (subcommittee meeting).

Although the working group was able to identify what it believed to be all relevant issues related to the environmental excellence proposal and developed resolutions for many them, the working group was not able to resolve all issues or achieve consensus on a proposed bill. As a result, the proponents of the environmental excellence agreement concept requested that the ERC recommend their original proposal to the General Assembly. This proposal appears in this report as “Environmental Excellence Agreements – 1.”

Leaking Petroleum Underground Storage Tanks

This working group, which dates back to the enactment of the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 (G.S. 143-215.94A et seq.), is perhaps the longest running and most successful of the environmental and natural resources working groups. The group was convened in February 2000 to consider the application of land-use restrictions to risk-based cleanups of environmental contamination resulting from releases from underground petroleum storage tanks (USTs). The need for this discussion resulted from the enactment in 1999 of S.L. 1999-198 (Senate Bill 1159, codified as G.S. 132B-279.9 and G.S. 143B-279.10), which required that land-use restrictions be included in all risk-based environmental remediation plans. The working group also considered an extension of the de minimis exception (G.S. 143-215.94E(a1)) to the requirement to report discharges of petroleum under G.S. 143-215.85.

Meetings of the working group were held on 3 February 2000, 21 February 2000, 3 March 2000, 31 March 2000, 14 April 2000, and 8 May 2000. While the working group was unable to resolve all issues related to the application of land-use restrictions to cleanups of releases from USTs, the members of the working group believed that these issues could be resolved through additional discussion following the 2000 Regular Session of the General Assembly. The working group agreed that temporarily exempting the Leaking Underground Storage Tank Cleanup Program from S.L. 1999-198 would facilitate those discussions. Proposed legislation to accomplish this purpose appears in the recommendations section of this report as “Petroleum Discharge Amends – 1.”

Although the working group did not reach consensus on proposed legislation to extend the de minimis exemption to the reporting requirement, the Commission Counsel presented proposed legislation to accomplish this purpose. This proposed legislation was modified by the ERC to narrow the exemption slightly. The modified proposal appears in this report as “Petroleum Discharges/ DeMinimis Reports.”

RECOMMENDATIONS

The Environmental Review Commission recommends the following legislative proposals to the 1999 General Assembly for action in the 2000 Regular Session. The full text of each proposal is included in *Appendix I: Legislative Proposals*.

Administration

Add. Notice/ Mining Permit Applications

Currently, an applicant for a mining permit must give notice of the application to owners of land adjoining the parcel affected by the proposed mining activity. This proposal would require that the applicant give notice to owners of land adjoining any land under the control of the applicant that is contiguous with the affected parcel. The applicant would also have to notify:

- The chief administrative officer of each county and municipality in which the affected land is located.
- Owners of land directly across a highway (with five lanes or less), a watercourse, or a railway from land under the control of the applicant that is contiguous with the affected parcel.
- Owners of land directly across from any other public right-of-way from land under the control of the applicant that is contiguous with the affected parcel, to the extent that DENR determines is necessary to provide adequate notice.

The proposal would become effective September 1, 2000.

Delegation of Env. Program Authority

This proposal would grant DENR and various commissions responsible for the protection of public health and the environment a general authorization to delegate administrative responsibilities for environmental permitting and enforcement programs to qualified local governments. In order to qualify for delegation, a local government would be required to have a local program with the legal authority and administrative capacity to adequately enforce standards that meet or exceed minimum Statewide standards. The proposal would become effective July 1, 2000.

Environmental Excellence Agreements – 1

This proposal would give the Secretary of Environment and Natural Resources (Secretary) the authority to enter into Environmental Excellence Program Agreements (EEPAs) with interested parties as an alternative to requiring compliance with statutory and regulatory permit requirements. Under an EEPA, the Secretary would agree to replace the permit requirements with an agreement designed to give a party the flexibility to try alternative approaches to achieve minimum compliance with environmental standards at a lower cost, achieve greater than minimum compliance, or both. The proposal would become effective July 1, 1999.

Extend billboard moratorium

This proposal would extend by one year the moratorium on constructing and permitting new billboards along the portion of Interstate Highway 40 from the Orange-Alamance County line to the municipal limits of the City of Wilmington. The moratorium would remain in place until July 1, 2001. The proposal would become effective July 1, 2000.

Private Counsel/ Atty. Fees/ State Emp.

This proposal would provide that the State would, upon request, provide private counsel for a State employee who is alleged in a civil action to be personally liable for damages from actions taken in the course of the employee's duties to enforce environmental laws. The proposal would also require the court to award attorney's fees to a State employee who prevails in a lawsuit related to actions taken in the course of the employee's duties to enforce environmental laws. The proposal would become effective when it becomes law, and would apply to actions and special proceedings commenced on or after that date.

Air Quality

I/M Technology and Fee Amends

This proposal would modify the testing technology and fees required under the State's automobile emissions inspection program. In the nine counties where emissions inspections are currently required, 1996 and later-model cars would be required to have their emissions analyzed using on-board diagnostic systems (OBD); current emissions testing requirements would remain in effect for vehicles manufactured prior to 1996. In counties where emissions testing will be phased in between 2003 and 2006, only the OBD tests would be required. The charge for a combined safety and emissions test would rise from the current price of \$19.40 to \$23.75 on July 1, 2000 and to \$25.90 on July 1, 2002, when the OBD testing requirement is initiated. Except for the provisions that would be phased in as noted above, the proposal would become effective when it becomes law.

DOT Establish Rural Planning Organizations

This proposal would authorize the Department of Transportation to work with local elected officials and representatives of local transportation systems to establish "Rural Planning Organizations." These organizations would:

- Work cooperatively with DOT to develop long range transportation plans.
- Provide a forum for public participation in rural transportation planning.
- Suggest regional priorities for the State's Transportation Improvement Plan.
- Provide information to local governments and the public.

The proposal would become effective July 1, 2000.

Exclude CMAQ Funds from Formula

This proposal would exclude federal congestion mitigation and air quality (CMAQ) funds from the regional equity distribution formula for funds expended on the intrastate system and the transportation improvement program. The State received approximately \$18 million in CMAQ funds in the 1999-2000 fiscal year. The proposal would become effective July 1, 2000.

Environmental Health

On-Site Wastewater System Contractors

This proposal would create the On-site Wastewater System Contractors Licensing Board and make it unlawful to install or repair an on-site wastewater system without being licensed by this board. A licensed general contractor would be considered licensed to install a "conventional" on-site wastewater system that consists only of a septic tank with a gravity rock and pipe distribution system. The sections of the proposal that would establish the licensing board would become effective when the proposal becomes law; the sections that would govern licensing by the board would become effective January 1, 2002.

Hazardous Sites

Brownfields Tax Incentive

This proposal would encourage the cleanup and redevelopment of old industrial sites by providing a partial exclusion from property taxation for five years for qualifying improvements made to property that is subject to a Brownfields agreement. The proposal would apply to taxes imposed for taxable years beginning on or after July 1, 2001.

Parks and Conservation

Bullhead Mountains State Natural Area

This proposal would authorize the addition of Bullhead Mountain State Natural Area to the State Parks System. Bullhead Mountain is located in Alleghany County. Funds for the acquisition and management of this property are being provided by the Conservation Trust of NC and the NC State Office of the National Audobon Society. The proposal would become effective when it becomes law.

Million Acre Open Space Goal

This proposal would codify the Governor's goal of preserving an additional one million acres of farmland, open space, and conservation lands by December 31, 2009. The proposal would also make the Department of Environment and Natural Resources the lead agency in the effort to achieve this goal. The proposal would become effective when it becomes law.

Cullasaja River Designation

This proposal would designate the portion of the Cullasaja River that runs through the Nantahala National Forest as a "Scenic River" in the State's Natural and Scenic River System. The proposal also states that the "scenic" designation would not add any new water quality requirements for dischargers into the river. The proposal would become effective when it becomes law.

Lea Island State Natural Area

This proposal would authorize the addition of the Lea Island State Natural Area to the State Parks System. The property will be acquired and managed with existing resources and funds provided by the NC State Office of the National Audobon Society. The proposal would become effective when it becomes law.

Mountains to Sea State Park Trail

This proposal would authorize the Department of Environment and Natural Resources to make the Mountains to Sea Trail a unit of the State Park System and to acquire property for the completion of the trail. The proposal would become effective when it becomes law.

Solid Waste

Removal of Abandoned Vessels

This proposal would make it unlawful to abandon a vessel in coastal waters or on State-owned submerged lands. The proposal would also authorize the Department of Environment and Natural Resources to remove the vessel and charge the owner for the removal costs if the owner does not remove the vessel within 30 days of receiving notice of the obligation to do so. The proposal would become effective when it becomes law.

White Goods Sunset Repeal

This proposal would repeal the sunset on the white goods tax that provides funds for the proper disposal of white goods. In addition, the proposal would require the Department of Environment and Natural Resources (DENR) to study options for changing the white goods tax rate and the allocation of proceeds from the white goods tax. The proposal would also require DENR to study options for changing the tax rate and the allocation of proceeds for the scrap tire disposal tax. The act would become effective when it becomes law.

Water Quality

Dry-Cleaning Solvent Cleanup Amends

This proposal would amend the Dry-Cleaning Solvent Cleanup Act to provide additional revenue for the Dry-Cleaning Solvent Cleanup Fund and facilitate access to the fund.

The proposal would:

- Establish a temporary environmental surtax to fund the cleanup of dry cleaning solvent contamination (Effective July 1, 2001; expires July 1, 2003).
- Earmark the State sales tax revenue from dry cleaning and laundry services for the Dry-cleaning Solvent Cleanup Fund (Effective July 1, 2003; expires July 1, 2010).
- Raise the tax on dry-cleaning solvents from \$5.85/ gallon to \$7.50/ gallon for chlorine-based solvents and from \$.80/ gallon to \$1.00/ gallon for hydrocarbon-based solvents (Effective July 1, 2003; expires July 1, 2010).
- Repeal the insurance requirement for accessing the Fund (Effective retroactively to April 1, 1998).
- Authorize the Environmental Management Commission to enter into contracts with private contractors for the assessment and remediation of contamination at dry cleaning facilities (Effective when the proposal becomes law).
- Establish a State goal for the reduction of the use of perchloroethylene F-1,1,3 by dry cleaners (Effective when the proposal becomes law).
- Require the Department of Environment and Natural Resources to report to the ERC on progress towards this goal and the cost-effectiveness of alternative dry cleaning technologies (Effective when the proposal becomes law).

Flood Hazard Prevention Act of 2000

This proposal would set minimum standards for development in floodplains and authorize local governments to adopt ordinances to regulate development in flood hazard areas. Effective January 1, 2001, the proposal would make implementation of an ordinance consistent with minimum Statewide standards for floodplain development a condition of a local government's eligibility for State disaster relief and State grants and loans for infrastructure. This provision would also make a building that receives a variance from the minimum elevation requirements of a flood hazard ordinance ineligible for State disaster assistance for losses from flooding. The proposed Statewide standards for floodplain development would:

- Require that the lowest habitable floor of any structure be elevated two feet above the 100-year floodplain.
- Forbid the location of salvage yards, chemical storage facilities, and other uses involving large quantities of hazardous materials or solid waste disposal in the 100-year floodplain.

Except as otherwise noted, the proposal would become effective when it becomes law.

Nonhazardous Dry-Cleaning Technology Incentive

This proposal would provide a new tax credit as an incentive for investing in dry-cleaning and wet-cleaning equipment that does not use hazardous substances as solvents. The tax credit could equal 35% of the cost of the equipment. The proposal would be effective for taxable years beginning on or after January 1, 2001.

Petroleum Discharge Amends – 1

This proposal would exempt sites contaminated by leaking petroleum underground storage tanks (USTs) from the land-use restrictions and deed recordation requirements imposed by SL 1999-198 on all contaminated sites remediated to risk-based, rather than pristine, standards. The proposal would also direct the Environmental Review Commission to continue studying issues related to the application of land-use restrictions to sites contaminated by USTs that are remediated to risk-based standards. The exemption would apply retroactively to October 1, 1999 and would expire September 1, 2001. The study provision would become effective when the proposal becomes law.

Petroleum Discharges/ De Minimis Reports

This proposal would exempt a release of petroleum to the environment from current reporting requirements if the release meets all of the following conditions:

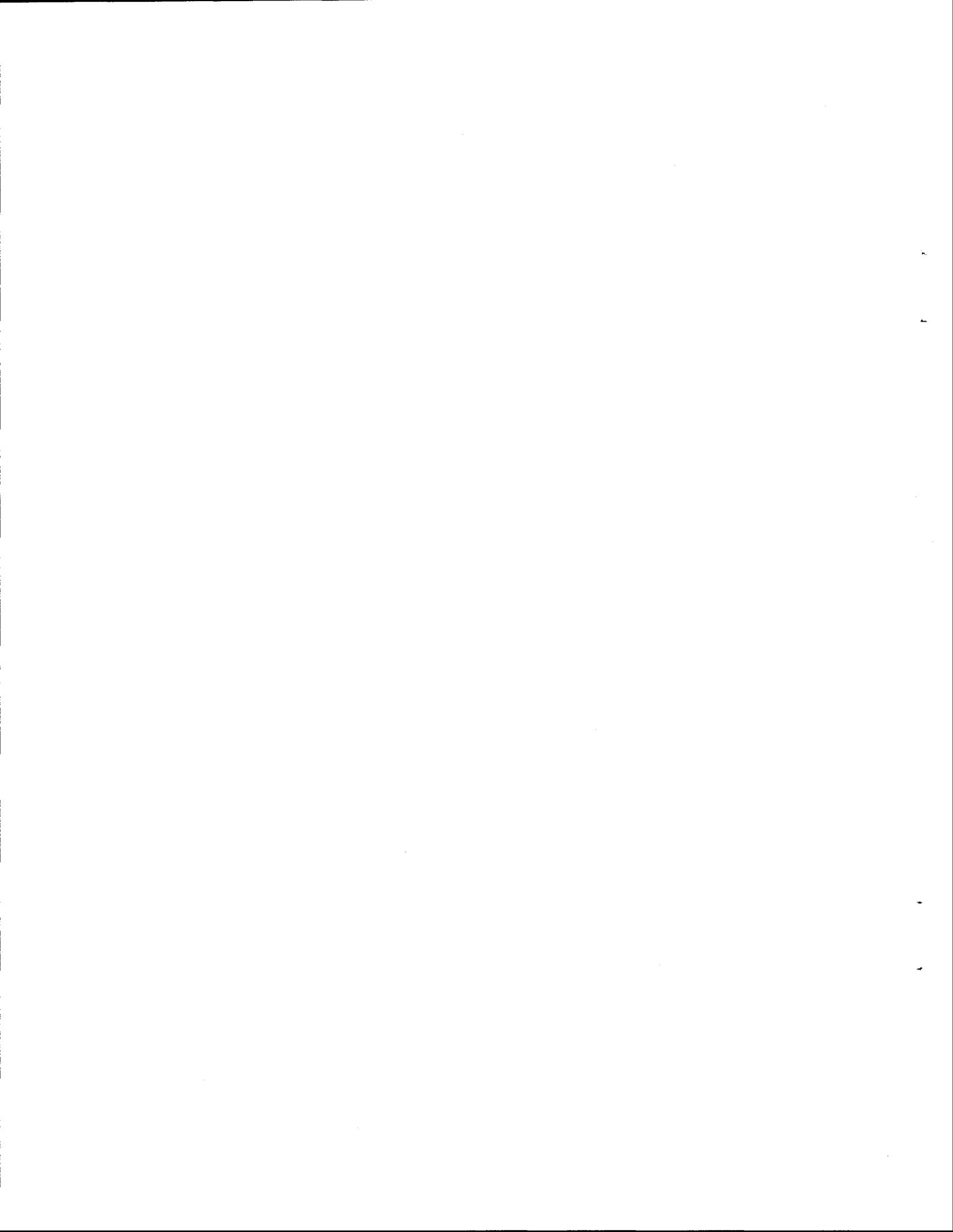
- The release is less than 25 gallons.
- The release is cleaned up in less than 24 hours.
- The release does not cause a sheen on surface water.
- The release does not occur within 100 feet of surface waters.

The proposal would become effective when it becomes law and would apply to petroleum releases that occur on or after that date.

Stormwater Utility Fees

This proposal would clarify that a stormwater utility may charge a fee to fund all costs of a stormwater management program, including administrative costs. The proposal would be effective retroactively to July 15, 1989.

APPENDIX I:
LEGISLATIVE PROPOSALS



Environmental Review Commission Recommended Legislation - 2000

topic	short title	Drafting Code
administrative		
	Add. Notice/ Mining Permit Application	ERC00-SG/RTZ-006.04(5.9)
	Delegation of Env. Program Authority	ERC00-RT/SBZ-014.01(5.4)
	Environmental Excellence Agreements - 1	ERC00-RT-SBZ-015.13(5.9)
	Extend Billboard Moratorium	ERC00-SBZ-004.03(5.4)
	Private Counsel/ State Emp./Atty. Fees	ERC00-RT/SBZ-010.03(5.9)
air quality		
	DOT Establish Rural Planning Organizations	99-DRW-RPO(v5)*
	Exclude CMAQ Funds from Formula	99-DRW-CMAQ(3)*
	I/M Technology and Fee Amends	ERC00-RT/SBZ-106.03(4.25)
environmental health		
	On-Site Wastewater System Contractors	ERC00-LDXZ-017.03(5.4)
hazardous substances		
	Brownfields Tax Incentive	ERC00-SGZ-002.01(4.25)
parks and conservation		
	Bullhead Mountains State Natural Area	ERC00-SGZ-012.03(4.25)
	Cullasaja River Designation	ERC00-SGZ-03.03
	Lea Island State Natural Area	ERC00-SGZ-011.02
	Million Acre Open Space Goal	ERC00-SGZ-018.02(5.9)
	Mountains to Sea State Park Trail	ERC00-SGZ-008.03(5.4)
solid waste		
	Removal of Abandoned Vessels	ERC00-SBZ-019.02(4.25)
	White Goods Sunset Repeal	ERC00-SGZ-009.01(5.4)

* Also recommended by Joint Legislative Transportation Oversight Commission (JLTO); to be introduced by JLTO members.

topic short title

Drafting Code

water quality

Dry Cleaning Solvent Cleanup Amends

ERC00-SBSX-005.02(4.25)

Flood Hazard Prevention Act of 2000

ERC00-SJZ-001.08(5.09)

Nonhazardous Dry-Cleaning Tech. Incentive

ERC00-LC/SGZ-013.01(4.25)

Petroleum Discharge Amendments - 1

ERC00-RTZ-021.04(5.9)

Petroleum Discharges/ De Minimis Reports

ERC00-RTZ-024.03(5.9)

Stormwater Utility Fees

ERC00-SGZ-007.04(4.25)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-SG/RTZ-006.04 (5.9)
15-MAY-00 EZT / 16:14:32

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Add. Notice/Mining Permit Application. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR ADDITIONAL NOTICE OF AN APPLICATION FOR A
3 PERMIT UNDER THE MINING ACT OF 1971, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 74-50 reads as rewritten:
7 "§ 74-50. Permits -- General. (a) No operator shall engage in
8 mining without having first obtained from the Department an
9 operating permit that covers the affected land and that has not
10 been terminated, revoked, suspended for the period in question,
11 or otherwise become invalid. An operating permit may be modified
12 from time to time to include land neighboring the affected land,
13 in accordance with procedures set forth in G.S. 74-52. A
14 separate permit shall be required for each mining operation that
15 is not on land neighboring a mining operation for which the
16 operator has a valid permit.
17 (b) As used in this subsection, 'land adjoining' means any
18 parcel or tract of land that is not owned in whole or in part by
19 or under the control of the applicant or operator or any
20 affiliate, parent, or subsidiary of the applicant or operator and
21 that is contiguous to either: (i) any parcel or tract that
22 includes affected land or (ii) any parcels or tracts of land that

1 are owned in whole or in part by or under the control of the
2 applicant or operator or any affiliate, parent, or subsidiary of
3 the applicant or operator and that, taken together, are
4 contiguous to affected land. At the time of the an application
5 for a new mining permit or for a permit modifications that add
6 owners modification to add an owner of record of lands land
7 adjoining the permit boundaries, the applicant or operator shall
8 make a reasonable effort, satisfactory to the Department, to
9 notify all owners of record of land adjoining the proposed site,
10 and to notify the chief administrative officer of the county or
11 municipality in which the site is located that the operator
12 intends to conduct a mining operation on the site in question.
13 notify:

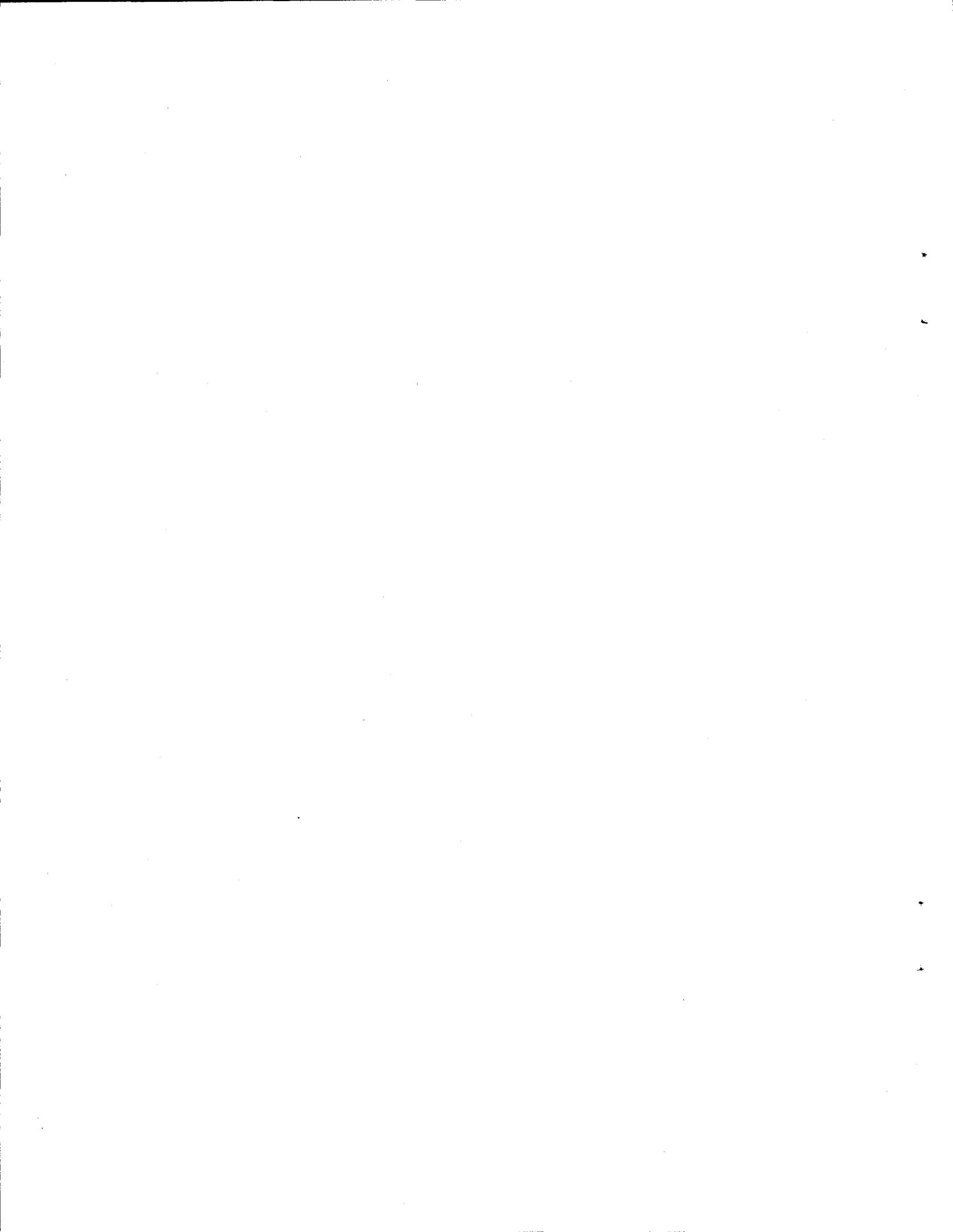
- 14 (1) The chief administrative officer of each county and
15 municipality in which the affected land is located.
- 16 (2) The owners of record of land adjoining the tract of
17 land that includes the affected land.
- 18 (3) The owners of record of land that lies directly
19 across a highway, as defined in G.S. 20-4.01(13),
20 that has five lanes or less if the tract of land
21 that includes the affected land is adjacent to the
22 highway.
- 23 (4) The owners of record of land that lies directly
24 across any creek, stream, river, or other
25 watercourse; railroad track; or utility or other
26 public right-of-way that is adjacent to the tract
27 of land that includes the affected land to the
28 extent that the Department, in its discretion,
29 determines to be necessary to provide adequate
30 notice of the application.

31 (b1) The notice shall inform the owners of record and chief
32 administrative officers of the opportunity to submit written
33 comments to the Department regarding the proposed mining
34 operation and the opportunity to request a public hearing
35 regarding the proposed mining operation. Requests for public
36 hearing shall be made within 30 days of issuance of the notice.

37 (c) No permit shall become effective until the operator has
38 deposited with the Department an acceptable performance bond or
39 other security pursuant to G.S. 74-54. If at any time the bond
40 or other security, or any part thereof, shall lapse for any
41 reason other than a release by the Department, and the lapsed
42 bond or security is not replaced by the operator within 30 days
43 after notice of the lapse, the permit to which the lapsed bond or
44 security pertains shall be automatically revoked.

1 (d) An operating permit shall be granted for a period not
2 exceeding 10 years. If the mining operation terminates and the
3 reclamation required under the approved reclamation plan is
4 completed prior to the end of the period, the permit shall
5 terminate. Termination of a permit shall not have the effect of
6 relieving the operator of any obligations that the operator has
7 incurred under an approved reclamation plan or otherwise. Where
8 the mining operation itself has terminated, no permit shall be
9 required in order to carry out reclamation measures under the
10 reclamation plan."

11 Section 2. This act becomes effective 1 September 2000.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-RT/SBZ-014.01 (5.4)
12-MAY-00 14:24:50

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Delegation of Env. Program Authority. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL
3 RESOURCES AND VARIOUS COMMISSIONS RESPONSIBLE FOR THE
4 PROTECTION OF THE ENVIRONMENT TO DELEGATE RESPONSIBILITY FOR
5 THE IMPLEMENTATION OF CERTAIN PROGRAMS TO UNITS OF LOCAL
6 GOVERNMENT.
7 The General Assembly of North Carolina enacts:
8 Section 1. Article 7 of Chapter 143B of the General
9 Statutes is amended by adding a new section to read:
10 "§ G.S. 143B-279.11. Delegation of program implementation to a
11 unit of local government.
12 (a) The Secretary of Environment and Natural Resources, the
13 Coastal Resources Commission, the Commission for Health Services,
14 and the Environmental Management Commission may delegate to a
15 unit of local government the authority to implement an
16 environmental permitting and enforcement program.
17 (b) The Secretary or the responsible Commission may only
18 delegate implementation authority to a unit of local government
19 that has developed a local program that:

- 1 (1) Includes an ordinance that provides maintenance and
2 inspection procedures.
3 (2) Establishes standards that equal or exceed minimum
4 Statewide standards.
5 (3) Provides for the adequate enforcement of its
6 standards.
7 (4) Provides for the administrative resources necessary
8 to effectively and efficiently carry out the
9 program.

10 (c) A local government may create or designate agencies to
11 administer and enforce a delegated program.

12 (d) The Secretary or the responsible Commission shall assume
13 responsibility for a delegated program if the local government
14 fails to adequately administer and enforce the provisions of the
15 program. Prior to assuming control of the program, the Secretary
16 or responsible Commission shall notify the local government in
17 writing of any deficiencies and include recommendations for
18 correction of these deficiencies. If the local government has
19 failed to correct the noticed deficiencies within 30 days of
20 receipt of notice, the Secretary or responsible Commission shall
21 assume responsibility for the delegated program. A decision by
22 the Secretary or the responsible Commission to assume
23 responsibility for a delegated program is not subject to review
24 in an administrative hearing under Article 3 of Chapter 150B of
25 the General Statutes. A decision by the Secretary or the
26 responsible Commission to assume responsibility for a delegated
27 program is a final agency decision and is subject to judicial
28 review as provided in Article 4 of Chapter 150B of the General
29 Statutes."

30 Section 2. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

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BILL DRAFT ERC00-RT/SBZ-015.13 (5.9)
12-MAY-00 14:24:13

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Environmental Excellence Agreements-1. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A VOLUNTARY PROGRAM REGARDING ENVIRONMENTAL
3 EXCELLENCE PROGRAM AGREEMENTS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 143 of the General Statutes is
6 amended by adding a new Article to read:
7 "Article 17.
8 "Environmental Excellence Program Agreements Act.
9 "§ 113A-241. Title.
10 This Article may be cited as the Environmental Excellence
11 Program Agreement Act.
12 "§ 113A-242. Purpose.
13 The purpose of this Article is to create a voluntary program
14 whereby persons subject to environmental laws and the Secretary
15 may enter into Environmental Excellence Program Agreements
16 (EEPAs) and to direct agencies of the State to support and
17 encourage the development of agreements that use innovative
18 environmental measures or strategies not otherwise recognized or
19 allowed under existing laws and rules to achieve results that

1 represent environmental excellence. Agencies shall encourage
2 EEPA's that favor or promote pollution prevention, source
3 reduction, or improvements in practices that accomplish both of
4 the following:

- 5 (1) The pollution prevention, source reduction, or
6 improvements in practices are transferable to other
7 interested entities.
- 8 (2) The pollution prevention, source reduction, or
9 improvements in practices will achieve overall
10 environmental results that are equal to or better
11 than those required by otherwise applicable rules
12 and requirements.

13 "§ 113A-243. Definitions.

14 For the purpose of this Article, the following definitions
15 apply:

- 16 (1) 'Agency' means any State agency, board, department,
17 division, authority, or commission that administers
18 environmental laws. Agency also means any regional
19 or local authority that administers environmental
20 laws pursuant to jurisdiction derived from the
21 State.
- 22 (2) 'Director' means the individual or body of
23 individuals in whom the legal authority of an
24 agency is vested by any provision of law. If the
25 agency head is a body of individuals, director
26 means a majority of those individuals.
- 27 (3) 'Environmental law' means all local, regional, or
28 State statutes, rules, or regulations affecting the
29 environment, including the following provisions of
30 the General Statutes: Article 1 of Chapter 113;
31 G.S. 113-229; G.S. 113-230; Articles 4 and 7 of
32 Chapter 113A; Articles 1, 1A, 10, and 11 of
33 Chapter 130A; Parts 1, 2, 2A, 2B, 2C, and 2D of
34 Article 9 of Chapter 130A; Articles 21, 21A, 21B,
35 and 38 of Chapter 143; Articles 1, 3, and 7 of
36 Chapter 143B; all rules adopted pursuant to those
37 statutes, including Titles 10 and 15A of the North
38 Carolina Administrative Code; and any local or
39 regional laws applying to the same or similar
40 environmental issues pursuant to authority

- 1 delegated by the General Assembly. Environmental
2 laws do not include any provisions of the General
3 Statutes or of any municipal or county ordinance
4 that regulates the selection of a location for a
5 new facility, including swine farms, concentrated
6 animal feeding operations, animal waste management
7 systems, and facilities operated for the off-site
8 treatment or disposal of radioactive or hazardous
9 waste.
- 10 (4) 'Facility' means any site, any manufacturing or
11 natural resource management operation, or any
12 business or municipal activity that is regulated
13 under any environmental laws.
- 14 (5) 'Secretary' means the Secretary of the Department
15 of Environment and Natural Resources.
- 16 (6) 'Sponsor' means a person, group, or association
17 that submits a proposal for an EEPA.
- 18 (7) 'Stakeholder' means any person or group of persons
19 of common interest directly or indirectly affected
20 in his, her or its person, property, or employment
21 by an EEPA. Potential stakeholders include, but
22 are not limited to, employees and employee
23 representatives, neighbors, community and civic
24 organizations, government agencies, trade and
25 business associations, and environmental
26 organizations.
- 27 "§ 113A-244. Authority to enter into environmental excellence
28 program agreements (EEPAs).
- 29 (a) The Secretary may enter into any EEPA with any person
30 subject to regulation by environmental laws, even if one or more
31 of the terms of the EEPA would be inconsistent with an otherwise
32 applicable environmental law or condition of an environmental
33 permit.
- 34 (b) The Secretary may designate the director of an agency to
35 act for the Secretary and to enter into EEPAs affecting or
36 modifying environmental laws administered by that agency. Where
37 a sponsor proposes an EEPA that would affect or modify
38 environmental laws administered by more than one State agency,
39 the Secretary may designate one or more directors to enter into

1 that EEPA, or the Secretary may enter into that EEPA on behalf of
2 the State.

3 (c) Where an agency has jurisdiction over environmental
4 matters in a region of the State and administers environmental
5 laws, either directly or through the adoption of regulations for
6 that region, the director of that regional agency shall possess
7 the authorities and functions that the Secretary has under this
8 Article, including the authority to enter into an EEPA for the
9 pertinent region if the EEPA will affect or modify environmental
10 laws administered by the regional agency.

11 "§ 113A-245. Contents of proposed EEPA project.

12 Any person owning or operating a facility subject to regulation
13 under the environmental laws may be a sponsor. A trade
14 association or other authorized representative of owners or
15 operators of facilities subject to environmental laws may be a
16 sponsor for a programmatic EEPA for multiple facilities. Any
17 person who is a sponsor shall submit to the Department the
18 following information and any other information requested by the
19 Secretary or a director designated under G.S. 113A-244:

20 (1) A statement that describes how the proposed EEPA is
21 consistent with the purpose of this Article and the
22 criteria for approving an EEPA under G.S.
23 143-215.115G.

24 (2) For a site-specific EEPA, a comprehensive
25 description of the proposed environmental
26 excellence project that includes the nature of the
27 facility and the operations that will be affected,
28 how the facility or operations will achieve results
29 that represent environmental excellence, and the
30 nature of the anticipated results.

31 (3) For a programmatic EEPA, a comprehensive
32 description of the proposed environmental
33 excellence project that identifies the facilities
34 and the operations that are expected to
35 participate, how participating facilities or
36 operations will achieve results that represent
37 environmental excellence, the nature of the results
38 that will be achieved, and the method to identify
39 and document the commitments made by individual
40 participating facilities.

1 (4) A checklist that summarizes any environmental
2 benefits or adverse environmental impacts that will
3 result if the proposal is approved and implemented.

4 (5) The draft EEPA.

5 "§ 113A-246. Stakeholder plan.

6 Any EEPA must contain the sponsor's plan to identify and
7 contact stakeholders, to advise stakeholders of the facts and
8 nature of the project, and to enable stakeholder participation,
9 review, and comment during development of the proposed EEPA. The
10 availability of periodic performance reviews submitted pursuant
11 to G.S. 143-215.115F shall be made available to stakeholders by
12 the Secretary. The Secretary or sponsor shall publish notice in
13 the North Carolina Register and/or other media as appropriate of
14 the availability of periodic performance reviews within 30 days
15 of receipt by the Secretary.

16 "§ 113A-247. Terms and conditions of an EEPA.

17 Any EEPA shall contain all of the following terms and
18 conditions:

19 (1) Identification of all federal, State, and regional
20 statutes, rules, regulations, and any permits and
21 permit requirements that are affected by the EEPA.

22 (2) Any alternative or innovative approach to statutes,
23 rules, and regulations effected by the EEPA.

24 (3) A statement of the environmental excellence and
25 innovation goals established by the project,
26 clearly identified as being in either of the
27 following categories:

28 a. Measures that create enforceable legal rights
29 or obligations.

30 b. Overall project targets that do not create
31 enforceable legal rights or obligations.

32 (4) A statement describing how the EEPA will achieve
33 the purpose of this Article.

34 (5) A statement describing how the EEPA will be
35 implemented, including a list of implementation
36 steps and an implementation schedule.

37 (6) A statement that the EEPA will not increase overall
38 worker safety risks or impose unjust or
39 disproportionate environmental impacts.

- 1 (7) A statement that a stakeholder plan, as required by
2 G.S. 113A-246, was implemented.
- 3 (8) A statement describing how any participating
4 facility will measure and demonstrate its
5 compliance with all environmental excellence and
6 innovation goals in the EEPA, including a
7 description of the methods to be used to monitor
8 performance, criteria that represent acceptable
9 performance, and the method of reporting
10 performance to the public.
- 11 (9) A description of and plan for public access to
12 information needed to assess any environmental
13 benefits and any adverse environmental impacts of
14 the EEPA.
- 15 (10) A requirement to submit at least annually periodic
16 performance reviews of compliance with the EEPA to
17 the Secretary or a director designated pursuant to
18 G.S. 113A-244 for review and approval within 30
19 days.
- 20 (11) Provisions for voluntary and involuntary
21 termination of the EEPA.
- 22 (12) The duration of the EEPA and provisions for its
23 renewal.
- 24 (13) Statements approving the EEPA made by or on behalf
25 of the Secretary, a director designated pursuant to
26 G.S. 113A-244, and the sponsor.
- 27 (14) Additional terms, consistent with this Article, as
28 requested by the Secretary or a director designated
29 pursuant to G.S. 113A-244.

30 "§ 113A-248. Criteria for approving an EEPA.
31 The Secretary or a director designated pursuant to G.S.
32 113A-244 shall not approve an EEPA unless the EEPA will achieve
33 one or more of the following:

- 34 (1) Emissions reductions or reductions in the discharge
35 of wastes or reductions in environmental risk that
36 achieve better overall environmental results at the
37 participating facility than those required by
38 otherwise applicable environmental regulation.
- 39 (2) Compliance with applicable environmental standards
40 or limitations in a manner that is equal to or

1 better than the method of compliance or the method
2 to demonstrate compliance required by applicable
3 environmental regulation or conditions of permits.
4 A sponsor may comply with this subdivision by
5 demonstrating an innovative approach or
6 cost-effective results.

7 Prior to approval of an EEPA, the Secretary or a director
8 designated pursuant to G.S. 113A-244 may require the sponsor to
9 demonstrate the financial ability to implement the EEPA. An EEPA
10 may not be approved to remedy an ongoing state of noncompliance.
11 In reviewing proposed EEPAs, the Secretary or a director
12 designated pursuant to G.S. 113A-244 shall give preference to
13 proposals that include the implementation of effective
14 environmental management systems.

15 "§ 113A-249. Incentives.

16 The Secretary or a director designated pursuant to G.S.
17 113A-244 shall publish a list of incentives that may be provided
18 as part of an approved EEPA. The sponsor of an EEPA may request
19 that listed incentives be included in an EEPA in addition to, or
20 in lieu of, EEPA provisions that provide regulatory flexibility
21 consistent with this Act. Incentives may include, but are not
22 limited to, public recognition programs, tax credits, preferred
23 vendor status, streamlined record-keeping monitoring and
24 reporting requirements, extended permit intervals, expedited
25 permit processing, and priority in consideration for grant funds.

26 "§ 113A-250. Public notice and comment.

27 At least 30 days before entering into or modifying an EEPA, the
28 Secretary or a director designated pursuant to G.S. 113A-244
29 shall publish a notice of the proposed agreement in a newspaper
30 having general circulation in each county in which any facility
31 covered by the proposed EEPA is located. The notice shall
32 contain a general description of the proposed EEPA or
33 modification of an EEPA, including an identification of the
34 facilities to be covered, the aspects of the project that
35 constitute environmental excellence, the regulatory flexibility
36 requested by the sponsor, and an announcement that the public has
37 an opportunity to comment within 30 days after the notice is
38 published.

39 "§ 113A-251. Effect of an approved EEPA.

1 (a) Any legal requirement under the environmental laws shall
2 be superseded and replaced by the terms and provisions of an
3 approved EEPA to the extent that the EEPA provides alternative
4 means to define and achieve compliance. Any facility that is the
5 subject of an approved EEPA shall comply with the terms of the
6 EEPA in lieu of the environmental laws that are superseded and
7 replaced by the approved EEPA. Superseded and replaced legal
8 requirements shall be clearly identified in the EEPA. In the
9 event of termination of an EEPA for nonperformance under G.S.
10 143-215.115L, the Secretary (or director designated pursuant to
11 G.S. 113A-244) shall require the sponsor to apply for a permit or
12 approval to comply with such identified superseded and replaced
13 legal requirements in accordance with the procedures of G.S.
14 143-215.115L.

15 (b) Any permit that is affected by an approved EEPA shall be
16 revised by the agency with jurisdiction over such permit in order
17 to conform its terms to the pertinent provisions of the approved
18 EEPA. Permit revisions shall be completed within 60 days after
19 the effective date of the EEPA and shall comply with all
20 applicable procedural requirements, including, where applicable,
21 public notice, the opportunity to comment, and the opportunity
22 for review and comment by federal agencies.

23 (c) Other than as superseded or replaced as provided in an
24 approved EEPA, any existing permit requirements remain in effect
25 and are enforceable.

26 "§ 113A-252. Judicial review.

27 The decision to approve or disapprove a proposed EEPA is at the
28 discretion of the Secretary or a director designated pursuant to
29 G.S. 113A-244. A decision to approve a proposed EEPA or to
30 terminate or modify an approved EEPA is a final decision in a
31 contested case and subject to judicial review pursuant to Article
32 4 of Chapter 150B of the General Statutes. Any party seeking
33 judicial review pursuant to this section shall be deemed to have
34 exhausted all administrative remedies made available by statute
35 or agency rule. To obtain judicial review pursuant to this
36 section, any person seeking review shall file a petition in Wake
37 County Superior Court or in the superior court of the county in
38 which the facility subject to the EEPA is located. Any petition
39 for review shall be filed with the clerk of superior court within
40 30 days after the decision of the Secretary or a director

1 designated pursuant to G.S. 113A-244 is served upon the sponsor
2 of the EEPA.

3 "§ 113A-253. Termination of EEPA for nonperformance.

4 (a) The Secretary or a director designated pursuant to G.S.
5 113A-244 may, by providing written notice to each party to the
6 EEPA, terminate the EEPA in whole or in part if, after notice and
7 a reasonable opportunity to cure, a facility subject to the EEPA
8 fails to substantially perform any term or condition in an
9 approved EEPA that prevents achievement of the stated purposes
10 set forth in G.S. 113A-242.

11 (b) The notice under subsection (a) of this section shall
12 specify the extent to which the EEPA is to be terminated, state
13 the basis for termination, and provide a description of the
14 opportunity for judicial review of the decision to terminate the
15 EEPA.

16 (c) After receipt of notice under this section, the sponsor
17 has 60 days in which to apply for any permit or approval affected
18 by any terminated portion of the EEPA. An application filed
19 during the 60-day period is a timely application for renewal of a
20 permit under any applicable law. The terms and conditions of the
21 EEPA shall continue in effect until a final permit or approval is
22 issued. If the sponsor fails to submit a timely or complete
23 application, any affected permit or approval may be modified at
24 any time in a manner that is consistent with applicable law.

25 "§ 113A-254. Enforcement of environmental laws and EEPAs.

26 (a) Nothing in this Article shall limit the authority of the
27 Attorney General, a prosecuting attorney, or a director to
28 initiate a criminal, civil, or administrative action against a
29 person for any violation of any environmental requirement, except
30 to the extent that this Article provides that any environmental
31 law is superseded and replaced by the terms and provisions of an
32 approved EEPA. A violation of a term or condition of an approved
33 EEPA listed in accordance with G.S. 113A-247(3)a. is subject to
34 penalties and remedies to the same extent as a violation of the
35 applicable environmental law that it supersedes pursuant to the
36 EEPA.

37 (b) Except as provided in G.S. 113A-253(a), failure to meet
38 the overall EEPA project targets listed in accordance with G.S.
39 113A-247(3)b. shall not be subject to any form of criminal or

1 civil penalties, including penalties, orders, or any form of
2 injunctive relief.

3 (c) This Article does not create a private cause of action for
4 citizen suits or otherwise alter or amend other statutory
5 provisions authorizing citizen suits.

6 "§ 113A-255. Fees.

7 An EEPA may contain a reduced fee schedule with respect to any
8 program that otherwise applies to the facilities subject to the
9 EEPA.

10 "§ 113A-256. State Environmental Policy Act; exemption.

11 A decision to approve an EEPA or terminate or modify an
12 approved EEPA shall not be subject to the requirements of the
13 North Carolina Environmental Policy Act of 1971, Article 1 of
14 Chapter 113A of the General Statutes.

15 "§ 113A-257. Rule making.

16 Any State, regional, or local agency administering programs
17 pursuant to an environmental law may adopt rules or ordinances to
18 implement this Article. An agency need not adopt rules or
19 ordinances in order to consider or enter into an EEPA."

20 Section 2. This act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-SBZ-004.03 (5.4)
15-MAY-00 10:32:44

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Extend billboard moratorium.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE MORATORIUM ON NEW BILLBOARDS ALONG A
3 DESIGNATED SECTION OF INTERSTATE 40, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. The moratorium on the erection of outdoor
7 advertising along the portion of Interstate Highway 40 from the
8 Orange-Alamance County line to the municipal limits of the City
9 of Wilmington, imposed by S.L. 1999-436, is extended. The
10 moratorium imposed by this section shall not apply to outdoor
11 advertising described in subdivisions (1), (2), and (3) of G.S.
12 136-129.
13 Section 2. A moratorium is imposed on the issuance of
14 permits for the construction of new outdoor advertising along the
15 portion of Interstate Highway 40 from the Orange-Alamance County
16 line to the municipal limits of the City of Wilmington. The
17 moratorium imposed by this section shall not apply to outdoor
18 advertising described in subdivisions (1), (2), and (3) of G.S.
19 136-129.

1 Section 3. This act becomes effective July 1, 2000 and
2 expires July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-RT/SBZ-010.03 (5.9)
15-MAY-00 EZT / 12:27:23

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Private Counsel/Atty. Fees/State Emp. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PRIVATE COUNSEL AND TO PROVIDE FOR THE
3 RECOVERY OF COSTS AND ATTORNEY'S FEES IN CIVIL ACTIONS AGAINST
4 A STATE EMPLOYEE WHEN THE STATE EMPLOYEE IS ALLEGED TO BE
5 PERSONALLY LIABLE FOR DAMAGES FOR ANY OFFICIAL ACT OR OMISSION
6 IN CONNECTION WITH THE ENFORCEMENT OF ENVIRONMENTAL LAWS, AS
7 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 114-2.3 reads as rewritten:
10 "§114-2.3. Use of private counsel limited.
11 Every agency, institution, department, bureau, board, or
12 commission of the State, authorized by law to retain private
13 counsel, shall obtain written permission from the Attorney
14 General prior to employing private counsel. An agency that is
15 responsible for the administration or enforcement of any law for
16 the protection of the environment, public health, or natural
17 resources shall request private counsel for a State employee or
18 former State employee who, in any action or special proceeding,
19 is alleged to be personally liable for damages as the result of
20 any act or omission by the employee during the course of his or
21 her employment, if the employee requests private counsel. The
22 Attorney General shall approve the request unless the Attorney

1 General determines that the employee clearly acted outside of the
2 course and scope of the employee's duties. This section does not
3 apply to counties, cities, towns, other municipal corporations or
4 political subdivisions of the State, or any agencies of these
5 municipal corporations or political subdivisions, or to county or
6 city boards of education."

7 Section 2. Article 3 of Chapter 6 of the General
8 Statutes is amended by adding a new section to read:

9 "§ 6-19.3. Allowance of costs and attorney's fees in certain
10 cases involving enforcement of environmental, public health, or
11 laws.

12 Upon the determination that a State employee or former State
13 employee has prevailed in a civil action or special proceeding
14 brought against the employee for an act or omission related to
15 the enforcement of any law for the protection of public health,
16 the environment, public health, or natural resources; the court
17 shall award costs, including reasonable attorney's fees for the
18 attorneys who represent the employee and the State agency
19 employer, unless the court finds that the award of attorney's
20 fees would be unjust."

21 Section 3. This act is effective when it becomes law
22 and applies to any action or special proceeding commenced on or
23 after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

D

99-DRW-RPO(v5)

THIS IS A DRAFT 9-MAY-00 09:43:06

Short Title: DOT establish rural planning orgs. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, IN
3 COOPERATION WITH LOCAL ELECTED OFFICIALS, TO ESTABLISH RURAL
4 TRANSPORTATION PLANNING ORGANIZATIONS TO PLAN RURAL
5 TRANSPORTATION SYSTEMS AND TO ADVISE THE DEPARTMENT ON RURAL
6 TRANSPORTATION POLICY.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 136-18 is amended by adding a new
9 subsection to read:
10 "(35) To establish rural planning organizations, as
11 provided in Article 17 of this Chapter."
12 Section 2. Chapter 136 of the General Statutes is
13 amended by adding a new Article to read:
14 "Article 17
15 "Rural Transportation Planning Organizations.
16 "§136-210 Definitions.
17 As used in this Article:

1 (1) 'Rural Transportation Planning Organization'-- means a
2 voluntary organization of local elected officials or their
3 designees and representatives of local transportation systems
4 formed by a memorandum of understanding with the Department of
5 Transportation to work cooperatively with the Department to plan
6 rural transportation systems and to advise the Department on
7 rural transportation policy.

8 §136-211. Department authorized to establish Rural Public
9 Transportation Planning Organizations.

10 (a) Authorization.-- The Department of Transportation is
11 authorized to form Rural Transportation Planning Organizations.

12 (b) Area represented.-- Rural Transportation Planning
13 Organizations shall include representatives from contiguous areas
14 in three to fifteen counties, with a total population of the
15 entire area represented of at least fifty thousand persons
16 according to the latest population estimate of the Office of
17 State Planning. Areas already included in a Metropolitan Planning
18 Organization shall not be included in the area represented by a
19 Rural Planing Organization.

20 (c) Membership.-- The Rural Transportation Planning
21 Organization shall consist of local elected officials or their
22 designees and representatives of local transportation systems in
23 the area as agreed to by all parties in a memorandum of
24 understanding.

25 (d) Formation; memorandum of understanding. -- The Department
26 shall notify local elected officials and representatives of local
27 transportation systems around the State of the opportunity to
28 form Rural Transportation Planning Organizations, The Department
29 shall work cooperatively with interested local elected officials,
30 their designees, and representatives of local transportation
31 systems to develop a proposed area, membership, functions, and
32 responsibilities of a Rural Transportation Planning Organization.
33 The agreement of all parties shall be included in a memorandum of
34 understanding approved by the membership of a proposed Rural
35 Transportation Planning Organization and the Secretary of the
36 Department of Transportation.

37 §136-212. Duties of Rural Transportation Planning Organizations.

38 (a) Duties.-- The duties of a Rural Transportation Planning
39 Organizations shall include, but not be limited to:

1 (1) Developing, in cooperation with the Department, long-range
2 local and regional multi-modal transportation plans.

3 (2) Providing a forum for public participation in the
4 transportation planning process.

5 (3) Developing and prioritizing suggestions for transportation
6 projects the organization believes should be included in the
7 state's Transportation Improvement Program.

8 (4) Providing transportation related information to local
9 governments and other interested organizations and persons.

10 §136-213. Administration and staff.

11 (a)Administrative entity.-- Each Rural Transportation Planning
12 Organization, working in cooperation with the Department, shall
13 select an appropriate administrative entity for the organization.

14 Eligible administrative entities include, but are not limited to,
15 regional economic development agencies, regional councils of
16 government, chambers of commerce, and local governments.

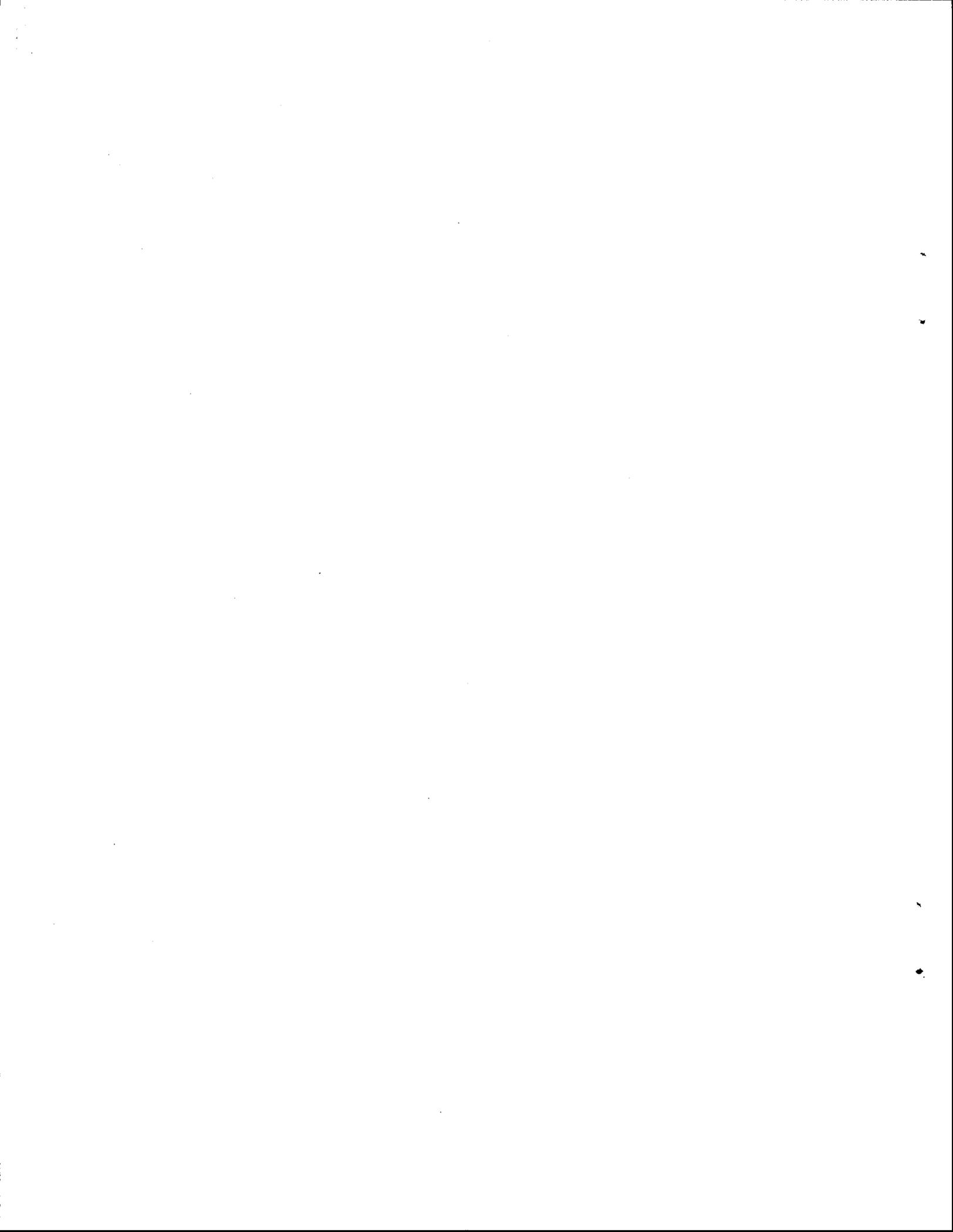
17 (b) Professional staff.-- The Department and each Rural
18 Transportation Planning Organization shall cooperatively
19 determine the appropriate professional planning staff needs of
20 the organization.

21 (c) Funding. -- If funds are appropriated for that purpose, the
22 Department may make grants to Rural Transportation Planning
23 Organizations for professional planning staff. The members of
24 the Rural Transportation Planning Organization shall contribute
25 at least twenty percent (20%) of the cost of any staff resources
26 employed by the organization. The Department may make additional
27 planning grants to economically distressed counties, as
28 designated by the North Carolina Department of Commerce,

29 Section 2. Nothing in this act shall require the General
30 Assembly to appropriate funds to implement it.

31 Section 3. The Department shall report to the Joint
32 Legislative Transportation Oversight Committee on the
33 implementation of this act on or before December 1, 2000.

34 Section 4. This act becomes effective July 1, 2000.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

D

99-DRW-CMAQ(3)
THIS IS A DRAFT 9-MAY-00 09:43:05

Short Title: Exclude CMAQ funds from formula (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXCLUDE FEDERAL CONGESTION MITIGATION AND AIR QUALITY
3 FUNDS FROM THE DISTRIBUTION FORMULA FOR FUNDS EXPENDED ON
4 TRANSPORTATION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 136-17.2A(a) reads as rewritten:
7 "(a) Funds expended for the Intrastate System projects listed
8 in G.S. 136-179 and both State and federal-aid funds expended
9 under the Transportation Improvement Program, other than federal
10 congestion mitigation and air quality improvement program funds
11 appropriated to the State by the United States pursuant to 23
12 U.S.C. §104(b)(2) and 23 U.S.C. §149, funds expended on an urban
13 loop project listed in G.S. 136-180 and funds received through
14 competitive awards or discretionary grants through federal
15 appropriations either for local governments, transportation
16 authorities, transit authorities, or the Department, shall be
17 distributed throughout the State in accordance with this section.
18 (1) Distribution Region A consists of the following
19 counties: Bertie, Camden, Chowan, Currituck, Dare,
20 Edgecombe, Gates, Halifax, Hertford, Hyde,

- 1 Johnston, Martin, Nash, Northampton, Pasquotank,
2 Perquimans, Tyrrell, Washington, Wayne, and Wilson.
3 (2) Distribution Region B consists of the following
4 counties: Beaufort, Brunswick, Carteret, Craven,
5 Duplin, Greene, Jones, Lenoir, New Hanover, Onslow,
6 Pamlico, Pender, Pitt, and Sampson.
7 (3) Distribution Region C consists of the following
8 counties: Bladen, Columbus, Cumberland, Durham,
9 Franklin, Granville, Harnett, Person, Robeson,
10 Vance, Wake, and Warren.
11 (4) Distribution Region D consists of the following
12 counties: Alamance, Caswell, Davidson, Davie,
13 Forsyth, Guilford, Orange, Rockingham, Rowan, and
14 Stokes.
15 (5) Distribution Region E consists of the following
16 counties: Anson, Cabarrus, Chatham, Hoke, Lee,
17 Mecklenburg, Montgomery, Moore, Randolph, Richmond,
18 Scotland, Stanly, and Union.
19 (6) Distribution Region F consists of the following
20 counties: Alexander, Alleghany, Ashe, Avery,
21 Caldwell, Catawba, Cleveland, Gaston, Iredell,
22 Lincoln, Surry, Watauga, Wilkes, and Yadkin.
23 (7) Distribution Region G consists of the following
24 counties: Buncombe, Burke, Cherokee, Clay, Graham,
25 Haywood, Henderson, Jackson, Macon, Madison,
26 McDowell, Mitchell, Polk, Rutherford, Swain,
27 Transylvania, and Yancey."
28 Section 2. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-RT/SBXZ-016.03 (4.25)
15-MAY-00 EZT / 16:19:47

ATTENTION: This is a draft and is not ready for introduction.

Short Title: I/M Technology and Fee Amends.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE AMBIENT AIR QUALITY, TO PROVIDE FOR THE USE OF
3 ON-BOARD DIAGNOSTIC EQUIPMENT IN THE MOTOR VEHICLE EMISSIONS
4 INSPECTION AND MAINTENANCE PROGRAM, AND TO INCREASE THE FEES
5 THAT ARE CHARGED FOR MOTOR VEHICLE SAFETY AND EMISSIONS
6 INSPECTIONS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
7 COMMISSION.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 143-215.107(a)(6) reads as rewritten:
10 "(6) To adopt motor vehicle emissions standards; to
11 adopt, when necessary and practicable, a motor
12 vehicle emissions inspection and maintenance
13 program to improve ambient air quality; ~~to require~~
14 ~~that motor vehicle emissions be monitored while the~~
15 ~~vehicle is in operation by means of onboard~~
16 ~~diagnostic equipment (OBD) installed by the vehicle~~
17 ~~manufacturer;~~ to require manufacturers of motor
18 vehicles to furnish to the Equipment and Tool
19 Institute and, upon request and at a reasonable

1 charge, to any person who maintains or repairs a
2 motor vehicle, all information necessary to fully
3 make use of the ~~onboard~~ on-board diagnostic
4 equipment and the data compiled by that equipment;
5 to certify to the Commissioner of Motor Vehicles
6 that ambient air quality will be improved by the
7 implementation of a motor vehicle emissions
8 inspection and maintenance program in a county. The
9 Commission shall implement this subdivision as
10 provided in G.S. 143-215.107A."

11 Section 2. G.S. 143-215.107A(b) is repealed.

12 Section 3. G.S. 143-215.107A(d) reads as rewritten:

13 "(d) Additional Counties. -- The Commission may require that
14 motor vehicle emissions inspections be performed in counties in
15 addition to those set out in subsection (c) of this section. In
16 determining whether to require that motor vehicle emissions
17 inspections be performed in a county, the Commission may consider
18 the population of, and distribution of population in, the county;
19 the projected change in population of, and distribution of
20 population in, the county; the number of vehicles registered in
21 the county; the projected change in the number of vehicles
22 registered in the county; vehicle miles traveled in the county;
23 the projected change in vehicle miles traveled in the county;
24 current and projected commuting patterns in the county; and the
25 current and projected impact of these factors on attainment of
26 air quality standards in the county and in areas outside the
27 county. The Commission may not require that motor vehicle
28 emissions ~~testing~~ inspections be performed in any county with a
29 population of less than 40,000 based on the most recent
30 population estimates prepared by the State Planning Officer. The
31 Commission may not require that motor vehicle emissions ~~testing~~
32 inspections be performed in any county in which the number of
33 vehicle miles traveled per day is less than 900,000, based on the
34 most recent estimates prepared by the Department of
35 Transportation. In order to disapprove a rule that requires that
36 motor vehicle emissions inspections be performed in one or more
37 additional counties, a bill introduced pursuant to G.S.
38 150B-21.3(b) must amend subsection (c) of this section to add one
39 or more other counties in which the total population and vehicle
40 miles traveled per day equal or exceed the total population and

1 vehicle miles traveled in the county or counties listed in the
2 rule that the bill would disapprove."

3 Section 4. Section 3.2 of S.L. 1999-328 reads as
4 rewritten:

5 "Section 3.2. ~~The Environmental Management Commission~~
6 ~~shall adopt rules to implement G.S. 143-215.107A(b), as enacted~~
7 ~~by Section 3.1 of this act. These rules shall become effective~~
8 ~~on 1 July 2002.~~ The Environmental Management Commission shall
9 not require that motor vehicle emissions inspections be performed
10 in any county pursuant to G.S. 143-215.107A(d), as enacted by
11 Section 3.1 of this act, prior to 1 July 2006. The Environmental
12 Management Commission shall not require motor vehicle emissions
13 inspections for diesel powered vehicles prior to 1 July 2001."

14 Section 5. Section 3.9 of S.L. 1999-328 is repealed.

15 Section 6. Effective 1 July 2002, G.S. 20-128(c) reads
16 as rewritten:

17 "(c) No motor vehicle registered in this State ~~which~~ that was
18 manufactured after model year 1967 shall be operated in this
19 State unless it is equipped with ~~such emission-control~~ emissions
20 control devices to reduce air pollution as that were installed
21 on the vehicle at the time of manufacture, provided the foregoing
22 requirement the vehicle was manufactured and these devices are
23 properly connected.

24 (d) The requirements of subsection (c) of this section shall
25 not apply where such if the emissions control devices have been
26 removed for the purpose of converting the motor vehicle to
27 operate on natural or liquefied petroleum gas or other
28 modifications have been made in order to reduce air ~~pollution,~~
29 ~~further provided that such modifications shall have first been~~
30 pollution and these modifications are approved by the Department
31 of Environment and Natural Resources."

32 Section 7. Effective 1 July 2000, G.S. 20-183.2(b)
33 reads as rewritten:

34 "(b) Emissions. -- A motor vehicle is subject to an emissions
35 inspection in accordance with this Part if it meets all of the
36 following requirements:

- 37 (1) It is subject to registration with the Division
38 under Article 3 of this Chapter.
39 (2) It is not a trailer whose gross weight is less than
40 4,000 pounds, a house trailer, or a motorcycle.

- 1 (3) It is a 1975 or later model.
- 2 (4) Repealed by Session Laws 1999-328, s. 3.11.
- 3 (5) It meets any of the following descriptions:
- 4 a. It is required to be registered in an
- 5 emissions county.
- 6 b. It is part of a fleet that is operated
- 7 primarily in an emissions county.
- 8 c. It is offered for rent in an emissions county.
- 9 d. It is a used vehicle offered for sale by a
- 10 dealer in an emissions county.
- 11 e. It is operated on a federal installation
- 12 located in an emissions county and it is not a
- 13 tactical military vehicle. Vehicles operated
- 14 on a federal installation include those that
- 15 are owned or leased by employees of the
- 16 installation and are used to commute to the
- 17 installation and those owned or operated by
- 18 the federal agency that conducts business at
- 19 the installation.
- 20 f. It is otherwise required by 40 C.F.R. Part 51
- 21 to be subject to an emissions inspection.
- 22 (6) It is not licensed at the farmer rate under G.S.
- 23 20-88(b)."
- 24 Section 8. Effective 1 July 2002, G.S. 20-183.3(b)
- 25 reads as rewritten:
- 26 "§ 20-183.3. Scope of safety inspection and emissions
- 27 inspection.
- 28 (a) Safety. -- A safety inspection of a motor vehicle consists
- 29 of an inspection of the following equipment to determine if the
- 30 vehicle has the equipment required by Part 9 of Article 3 of this
- 31 Chapter and if the equipment is in a safe operating condition:
- 32 (1) Brakes, as required by G.S. 20-124.
- 33 (2) Lights, as required by G.S. 20-129 or G.S.
- 34 20-129.1.
- 35 (3) Horn, as required by G.S. 20-125(a).
- 36 (4) Steering mechanism, as required by G.S. 20-123.1.
- 37 (5) Windows and windshield wipers, as required by G.S.
- 38 20-127. To determine if a vehicle window meets the
- 39 window tinting restrictions, a safety inspection
- 40 mechanic must first determine, based on use of an

- 1 automotive film check card or knowledge of window
2 tinting techniques, if after-factory tint has been
3 applied to the window. If after-factory tint has
4 been applied, the mechanic must use a light meter
5 approved by the Commissioner to determine if the
6 window meets the window tinting restrictions.
- 7 (6) Directional signals, as required by G.S. 20-125.1.
8 (7) Tires, as required by G.S. 20-122.1.
9 (8) Mirrors, as required by G.S. 20-126.
10 (9) Exhaust system, as required by G.S. 20-128. ~~For a~~
11 ~~vehicle that is subject to an emissions inspection~~
12 ~~in addition to a safety inspection, a visual~~
13 ~~inspection of the vehicle's emission control~~
14 ~~devices is included in the emissions inspection~~
15 ~~rather than the safety inspection.~~
- 16 (b) Emissions. -- An emissions inspection of a motor vehicle
17 consists of ~~a visual inspection of the vehicle's emission control~~
18 ~~devices to determine if the devices are present, are properly~~
19 ~~connected, and are the correct type for the vehicle and an~~
20 analysis of the exhaust emissions of the vehicle to determine if
21 the exhaust emissions meet the standards for the model year of
22 the vehicle set by the Environmental Management Commission or, if
23 the vehicle is a 1996 or later model, an analysis of data
24 provided by the on-board diagnostic (OBD) equipment installed by
25 the vehicle manufacturer to identify any deterioration or
26 malfunxion in the operation of the vehicle that would cause an
27 increase in the emission of pollutants by the vehicle that
28 violates standards for the model year of the vehicle set by the
29 Environmental Management Commission. ~~To pass an emissions~~
30 ~~inspection a vehicle must pass both the visual inspection and the~~
31 ~~exhaust emissions analysis.~~ When an emissions inspection is
32 performed on a vehicle, a safety inspection must be performed on
33 the vehicle as well.
- 34 (c) Reinspection After Failure. -- The scope of a reinspection
35 of a vehicle that has been repaired after failing an inspection
36 is the same as the original inspection unless the vehicle is
37 presented for reinspection within 30 days of failing the original
38 inspection. If the vehicle is presented for reinspection within
39 this time limit and the inspection the vehicle failed was a
40 safety inspection, the reinspection is limited to an inspection

1 of the equipment that failed the original inspection. If the
2 vehicle is presented for reinspection within this time limit and
3 the inspection the vehicle failed was an emissions inspection,
4 the reinspection is limited to the portion of the inspection the
5 vehicle failed and any other portion of the inspection that would
6 be affected by repairs made to correct the failure."

7 Section 9. Effective 1 July 2003, G.S. 20-183.2(b)
8 reads as rewritten:

9 "(b) Emissions. -- A motor vehicle is subject to an emissions
10 inspection in accordance with this Part if it meets all of the
11 following requirements:

- 12 (1) It is subject to registration with the Division
13 under Article 3 of this Chapter.
- 14 (2) It is not a trailer whose gross weight is less than
15 4,000 pounds, a house trailer, or a motorcycle.
- 16 (3) ~~It~~ Except as provided in G.S. 20-183.3(b), it is a
17 1975 1996 or later model.
- 18 (4) Repealed by Session Laws 1999-328, s. 3.11.
- 19 (5) It meets any of the following descriptions:
 - 20 a. It is required to be registered in an
21 emissions county.
 - 22 b. It is part of a fleet that is operated
23 primarily in an emissions county.
 - 24 c. It is offered for rent in an emissions county.
 - 25 d. It is a used vehicle offered for sale by a
26 dealer in an emissions county.
 - 27 e. It is operated on a federal installation
28 located in an emissions county and it is not a
29 tactical military vehicle. Vehicles operated
30 on a federal installation include those that
31 are owned or leased by employees of the
32 installation and are used to commute to the
33 installation and those owned or operated by
34 the federal agency that conducts business at
35 the installation.
 - 36 f. It is otherwise required by 40 C.F.R. Part 51
37 to be subject to an emissions inspection.
- 38 (6) It is not licensed at the farmer rate under G.S.
39 20-88(b)."

1 Section 10. Effective 1 July 2003, G.S. 20-183.3 reads
2 as rewritten

3 "§ 20-183.3. Scope of safety inspection and emissions
4 inspection.

5 (a) Safety. -- A safety inspection of a motor vehicle consists
6 of an inspection of the following equipment to determine if the
7 vehicle has the equipment required by Part 9 of Article 3 of this
8 Chapter and if the equipment is in a safe operating condition:

- 9 (1) Brakes, as required by G.S. 20-124.
- 10 (2) Lights, as required by G.S. 20-129 or G.S.
11 20-129.1.
- 12 (3) Horn, as required by G.S. 20-125(a).
- 13 (4) Steering mechanism, as required by G.S. 20-123.1.
- 14 (5) Windows and windshield wipers, as required by G.S.
15 20-127. To determine if a vehicle window meets the
16 window tinting restrictions, a safety inspection
17 mechanic must first determine, based on use of an
18 automotive film check card or knowledge of window
19 tinting techniques, if after-factory tint has been
20 applied to the window. If after-factory tint has
21 been applied, the mechanic must use a light meter
22 approved by the Commissioner to determine if the
23 window meets the window tinting restrictions.
- 24 (6) Directional signals, as required by G.S. 20-125.1.
- 25 (7) Tires, as required by G.S. 20-122.1.
- 26 (8) Mirrors, as required by G.S. 20-126.
- 27 (9) Exhaust system, as required by G.S. 20-128.

28 (b) ~~Emissions.~~ Emissions inspection requirements in certain
29 counties. --

30 (1) An emissions inspection of a 1975 or later model
31 motor vehicle in the counties of Cabarrus, Durham, Forsyth,
32 Gaston, Guilford, Mecklenburg, Orange, Union, and Wake consists
33 of an analysis of the exhaust emissions of the vehicle to
34 determine if the exhaust emissions meet the standards for the
35 model year of the vehicle set by the Environmental Management
36 Commission or, if the vehicle is a 1996 or later model, an
37 analysis of data provided by the on-board diagnostic (OBD)
38 equipment installed by the vehicle manufacturer to identify any
39 deterioration or malfunction in the operation of the vehicle that
40 would cause an increase in the emission of pollutants by the

1 vehicle that violates standards for the model year of the vehicle
2 set by the Environmental Management Commission. When an
3 emissions inspection is performed on a vehicle, a safety
4 inspection must be performed on the vehicle as well. When an
5 emissions inspection is performed on a vehicle, a safety
6 inspection must be performed on the vehicle as well.

7 (b) Emissions. -- An emissions inspection of a motor vehicle
8 consists of an analysis of data provided by the on-board
9 diagnostic (OBD) equipment installed by the vehicle manufacturer
10 to identify any deterioration or malfunction in the operation of
11 the vehicle that would cause an increase in the emission of
12 pollutants by the vehicle that violates standards for the model
13 year of the vehicle set by the Environmental Management
14 Commission. When an emissions inspection is performed on a
15 vehicle, a safety inspection must be performed on the vehicle as
16 well.

17 (c) Reinspection After Failure. -- The scope of a reinspection
18 of a vehicle that has been repaired after failing an inspection
19 is the same as the original inspection unless the vehicle is
20 presented for reinspection within 30 days of failing the original
21 inspection. If the vehicle is presented for reinspection within
22 this time limit and the inspection the vehicle failed was a
23 safety inspection, the reinspection is limited to an inspection
24 of the equipment that failed the original inspection. If the
25 vehicle is presented for reinspection within this time limit and
26 the inspection the vehicle failed was an emissions inspection,
27 the reinspection is limited to the portion of the inspection the
28 vehicle failed and any other portion of the inspection that would
29 be affected by repairs made to correct the failure."

30 Section 11. Effective 1 January 2006, G.S.
31 20-182.2(b)(3) reads as rewritten:

32 "(3) ~~Except as provided in G.S. 20-183.3(b), it~~ It is a
33 1996 or later model."

34 Section 12. Effective 1 January 2006, G.S. 20-183.3(b)
35 is repealed.

36 Section 13. Effective 1 July 2002, G.S. 20-183.5 reads
37 as rewritten:

38 "(a) Requirements. -- The Division may issue a waiver for a
39 vehicle that meets all of the following requirements:

- 1 (1) Fails an emissions inspection ~~because it passes the~~
 2 ~~visual inspection part of the inspection but fails~~
 3 ~~the exhaust emissions analysis part of the~~
 4 ~~inspection, but passes the safety inspection,~~
 5 including the visual inspection of emissions
 6 control devices required by G.S. 20-183.3(9).
- 7 (2) Has documented repairs costing at least the waiver
 8 amount made to the vehicle to correct the cause of
 9 the failure. The waiver amount is seventy-five
 10 dollars (\$75.00) if the vehicle is a pre-1981 model
 11 and is two hundred dollars (\$200.00) if the vehicle
 12 is a 1981 or newer model.
- 13 (3) Is reinspected and again fails the inspection
 14 ~~because it passes the visual inspection part of the~~
 15 ~~inspection but fails the exhaust emissions analysis~~
 16 ~~part of the inspection, but passes the safety~~
 17 inspection, including the visual inspection of
 18 emissions control devices required by G.S.
 19 20-183.3(9).
- 20 (4) Meets any other waiver criteria required by 40
 21 C.F.R. § 51.360."

22 Section 14. Effective 1 July 2000, G.S. 20-183.7(a)
 23 reads as rewritten:

24 " (a) Fee Amount. -- When a fee applies to an inspection of a
 25 vehicle or the issuance of an inspection sticker, the fee must be
 26 collected. The following fees apply to an inspection of a
 27 vehicle and the issuance of an inspection sticker:

<u>Type</u>	<u>Inspection</u>		<u>Sticker</u>	
Safety Only, Without After- Factory Tinted Window	\$ 8.25	<u>9.75</u>	\$ 1.00	<u>1.25</u>
Safety Only, With After- Factory Tinted Window	18.25	<u>19.75</u>	1.00	<u>1.25</u>
Emissions and Safety Without After-Factory Tinted Window	17.00	<u>20.75</u>	2.40	<u>3.00</u>
Emissions and Safety With After-Factory Tinted Window	27.00	<u>30.75</u>	2.40	<u>3.00.</u>

37 The fee for performing an inspection of a vehicle applies when
 38 an inspection is performed, regardless of whether the vehicle
 39 passes the inspection. The fee for an inspection sticker applies
 40 when an inspection sticker is put on a vehicle. The fee for

1 performing an inspection of a vehicle with a tinted window
 2 applies only to an inspection performed with a light meter after
 3 a safety inspection mechanic determined that the window had
 4 after-factory tint.

5 A vehicle that is inspected at an inspection station and fails
 6 the inspection is entitled to be reinspected at the same station
 7 at any time within 30 days of the failed inspection without
 8 paying another inspection fee."

9 Section 15. Effective 1 July 2002, G.S. 20-183.7(a)
 10 reads as rewritten:

11 " (a) Fee Amount. -- When a fee applies to an inspection of a
 12 vehicle or the issuance of an inspection sticker, the fee must be
 13 collected. The following fees apply to an inspection of a
 14 vehicle and the issuance of an inspection sticker:

15 <u>Type</u>	<u>Inspection</u>	<u>Sticker</u>
16 Safety Only, Without After-		
17 Factory Tinted Window	\$ 9.75	\$ 1.25
18 Safety Only, With After-		
19 Factory Tinted Window	19.75	1.25
20 Emissions and Safety Without		
21 After-Factory Tinted Window	20.75 <u>21.30</u>	3.00 <u>4.60</u>
22 Emissions and Safety With		
23 After-Factory Tinted Window	30.75 <u>31.30</u>	3.00 <u>4.60</u>

24 The fee for performing an inspection of a vehicle applies when
 25 an inspection is performed, regardless of whether the vehicle
 26 passes the inspection. The fee for an inspection sticker applies
 27 when an inspection sticker is put on a vehicle. The fee for
 28 performing an inspection of a vehicle with a tinted window
 29 applies only to an inspection performed with a light meter after
 30 a safety inspection mechanic determined that the window had
 31 after-factory tint.

32 A vehicle that is inspected at an inspection station and fails
 33 the inspection is entitled to be reinspected at the same station
 34 at any time within 30 days of the failed inspection without
 35 paying another inspection fee."

36 Section 16. Except as otherwise provided in this act,
 37 this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-LDXZ-017.03 (5.4)
16-MAY-00 EZT / 14:48:55

ATTENTION: This is a draft and is not ready for introduction.

Short Title: On-Site Wastewater System Contractors. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE ON-SITE WASTEWATER SYSTEM CONTRACTORS
3 LICENSING BOARD, TO REQUIRE THAT ON-SITE WASTEWATER SYSTEM
4 CONTRACTORS BE LICENSED, TO ESTABLISH LICENSING REQUIREMENTS
5 FOR ON-SITE WASTEWATER SYSTEM CONTRACTORS, AND TO CREATE
6 REMEDIES FOR VIOLATIONS OF THE LICENSING REQUIREMENTS AND OTHER
7 VIOLATIONS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
8 COMMISSION.
9 The General Assembly of North Carolina enacts:
10 Section 1. Article 7 of Chapter 143B of the General
11 Statutes is amended by adding a new Part to read:
12 "Part 9B. On-site Wastewater System Contractors Licensing Board.
13 "§ 143B-301.20. Definitions. The definitions in G.S. 87-122
14 apply in this Part.
15 "§ 143B-301.21. On-Site Wastewater System Contractors Licensing
16 Board.
17 (a) Creation. -- The On-Site Wastewater System Contractors
18 Licensing Board is created.
19 (b) Membership. -- The Board shall consist of nine members:
20 (1) One member shall be engaged in the business of
21 constructing, installing, or repairing on-site
22 wastewater systems and shall be appointed by the

- 1 General Assembly upon the recommendation of the
2 Speaker of the House of Representatives.
- 3 (2) One member shall be an environmental health
4 specialist and shall be appointed by the General
5 Assembly upon the recommendation of the Speaker of
6 the House of Representatives.
- 7 (3) One member shall be a representative of the
8 Cooperation Extension Service and shall be
9 appointed by the General Assembly upon the
10 recommendation of the Speaker of the House of
11 Representatives.
- 12 (4) One member shall be a manufacturer or supplier of
13 septic tanks or other on-site wastewater system
14 components and shall be appointed by the General
15 Assembly upon the request of the President Pro
16 Tempore of the Senate.
- 17 (5) One member shall be engaged in the business of
18 constructing, installing, or repairing on-site
19 wastewater systems and shall be appointed by the
20 General Assembly upon the recommendation of the
21 President Pro Tempore of the Senate.
- 22 (6) One member shall be an operator of on-site
23 wastewater systems in North Carolina who is
24 certified under Chapter 90A of the General Statutes
25 and shall be appointed by the President Pro Tempore
26 of the Senate.
- 27 (7) One member shall be engaged in the business of
28 constructing, installing, or repairing on-site
29 wastewater systems and shall be appointed by the
30 Governor.
- 31 (8) One member shall be the Executive-Vice President of
32 the North Carolina Home Builders Association, Inc.
33 or the Executive-Vice President's designee.
- 34 (9) One member shall be an employee of the Division of
35 Environmental Health of the Department of
36 Environment and Natural Resources.
- 37 (c) Terms. -- The member serving under subdivision (9) of
38 subsection (b) of this section shall serve at the pleasure of the
39 Governor. All appointments to the Board under subdivisions (1)
40 through (7) of subsection (b) of this section shall be for a term
41 of four years. The terms of members appointed to fill positions
42 under subdivisions (1) and (2) of subsection (b) of this section
43 shall expire on 30 June of years evenly divisible by four. The
44 terms of members appointed to fill positions under subdivisions

1 (3) and (4) of subsection (b) of this section shall expire on 30
2 June of years that follow by one year those years that are evenly
3 divisible by four. The terms of members appointed to fill
4 positions under subdivisions (5) and (6) of subsection (b) of
5 this section shall expire on 30 June of years that follow by two
6 years those years that are evenly divisible by four. The terms
7 of members appointed to fill positions under subdivision (7) of
8 subsection (b) of this section shall expire on 30 June of years
9 that precede by one year those years that are evenly divisible by
10 four. Members shall serve until a successor is appointed and
11 duly qualified. No member subject to a four-year term shall
12 serve more than two consecutive terms.

13 (d) Oath of Office. -- Each member of the Board, before
14 discharging the duties of the Board, shall file with the
15 Secretary of State a written oath to properly perform the duties
16 of a member of the Board and to uphold the Constitution of North
17 Carolina and the Constitution of the United States.

18 (e) Vacancies. -- For a member with a four-year term, an
19 appointment to fill a vacancy on the Board created by the
20 resignation, dismissal, disability, or death of a member shall be
21 for the balance of the unexpired term. A vacancy in an
22 appointment, including a vacancy resulting from a failure of the
23 General Assembly to make an appointment to that position, may be
24 filled as provided in G.S. 120-122.

25 (f) Officers. -- The Board shall elect a Chair and a
26 Secretary-Treasurer, each to serve a term of two years. The
27 Board shall specify the duties of the Secretary-Treasurer and may
28 require a bond for the faithful performance of those duties.

29 (g) Quorum. -- Five members shall constitute a quorum for the
30 conduct of business.

31 (h) Services. -- The Board may employ a full-time executive
32 secretary and any other personnel that it determines necessary to
33 carry out the duties of the Board and the provisions of this Part
34 and Article 9 of Chapter 87 of the General Statutes. The Board
35 shall determine the compensation, duties, and other terms and
36 conditions of employment of its executive secretary and other
37 employees.

38 (i) Compensation. -- Members of the Board shall be
39 compensated and reimbursed for expenses at the rates set forth in
40 G.S. 93B-5.

41 "§ 143B-301.22. Powers and duties of the Board.

42 (a) Meetings. -- The Board shall hold at least two regular
43 meetings each year. Special meetings may be held on call of the

- 1 Chair. The Chair shall call a meeting upon the request of any
2 three members of the Board.
- 3 (b) Use of seal. -- The Board shall adopt and use a common
4 seal.
- 5 (c) Adoption of Rules. -- The Board shall adopt rules to
6 govern its actions and to implement the provisions of this Part
7 and Article 9 of Chapter 87 of the General Statutes.
- 8 (d) Grades of licenses. -- The Board shall establish classes
9 or grades of licenses for on-site wastewater system contractors
10 based on the design capacity, complexity, projection costs, or
11 other differing features of approved on-site wastewater systems.
12 A license to construct, install, or repair a conventional system
13 shall be a Class or Grade 1 license.
- 14 (e) Written examinations. -- The Board shall develop and
15 administer written examinations for each class or grade of
16 license. The Board shall determine the time, place, and
17 frequency of examinations. The Board shall provide an
18 examination at least three times a year: one in each the coastal
19 plain, piedmont, and mountain areas of the State.
- 20 (f) Investigations. -- The Board shall conduct an
21 investigation concerning all matters within its jurisdiction
22 under this Part and Article 9 of Chapter 87 of the General
23 Statutes. The Board may expend its funds for salaries, fees, and
24 per diem expenses in connection with the investigation.
- 25 (g) Consideration of Complaints. -- A person may refer to the
26 Board charges of fraud, deceit, negligence, incompetency, or
27 misconduct against any contractor licensed under Article 9 of
28 Chapter 87 of the General Statutes. The charges shall be in
29 writing, sworn to by the complainant, and submitted to the Board.
30 These charges, unless dismissed without a hearing by the Board as
31 unfounded or trivial, shall be heard and determined by the Board
32 in accordance with the provisions of Chapter 150B of the General
33 Statutes.
- 34 (h) Records of Complaints. -- The Board shall establish and
35 maintain detailed records regarding complaints concerning each
36 licensee. The record shall include, for each licensee, the date
37 and nature of each complaint, investigatory action taken by the
38 Board, any findings by the Board, and the disposition of the
39 matter.
- 40 (i) Notice of Findings. -- The Board shall immediately notify
41 the appropriate local health departments and the Secretary of
42 State of its findings in the case of revocation or suspension of
43 a license or the reissuance of a revoked license.

1 (j) Acceptance of Funds. -- The Board may accept grants,
2 contributions, bequests, and gifts. Grants, contributions,
3 bequests, and gifts shall be kept in the same account as any
4 other funds deposited under this Part and Article 9 of Chapter 87
5 of the General Statutes.

6 (k) Applicability of Occupational Licensing Rules. -- The
7 Board is subject to the provisions of Chapter 93B of the General
8 Statutes."

9 Section 2. Chapter 87 of the General Statutes is
10 amended by adding a new Article to read:

11 "ARTICLE 9.

12 "On-Site Wastewater System Contractors Licensing.

13 "§ 87-120. Short title.

14 This Article may be cited as the On-Site Wastewater System
15 Contractors Licensing Act.

16 "§ 87-121. Purposes.

17 The purposes of this Article are: to protect property, public
18 health, and environmental health through the regulation and
19 education of any person, partnership, association, or corporation
20 in this State that constructs, installs, or repairs on-site
21 wastewater systems; to establish minimum standards regarding
22 ethical conduct, responsibility, training, experience,
23 background, and continuing education for on-site wastewater
24 system contractors; and to provide appropriate enforcement
25 procedures for rules adopted by the Board pursuant to this
26 Article or Part 9B of Article 7 of Chapter 143B of the General
27 Statutes.

28 "§ 87-122. Definitions.

29 As used in this Article:

30 (1) 'Board' means the On-Site Wastewater System
31 Contractors Licensing Board created in Part 9B of
32 Article 7 of Chapter 143B of the General Statutes.

33 (2) 'Construct' or 'construction' means any work,
34 including excavation, that acts to set into place
35 any on-site wastewater system and its components.

36 (3) 'Conventional system' means an on-site wastewater
37 system consisting of only a septic tank with a
38 gravity rock and pipe distribution system.

39 (4) 'Install' or 'installation' means any work that
40 constructs on-site wastewater components together
41 to form an on-site wastewater system at the
42 jobsite.

- 1 (5) 'On-site wastewater system' means any wastewater
2 system permitted under the provisions of Article 11
3 of Chapter 130A of the General Statutes.
- 4 (6) 'On-site wastewater system contractor' means any
5 person, firm, partnership, or corporation that for
6 valuable consideration, constructs, installs, or
7 repairs, or offers to construct, install, or repair
8 an on-site wastewater system in North Carolina.
- 9 (7) 'Repair' means the extension, alteration,
10 replacement, or relocation of existing components
11 of an on-site wastewater system.
- 12 (8) 'Responsible charge' means having direct control
13 and personal supervision of the installation,
14 construction, or repair of an on-site wastewater
15 system.

16 "§ 87-123. License required.

17 Except as provided in G.S. 87-132, no person, partnership,
18 association, or corporation shall construct, install, or repair,
19 or offer to construct, install, or repair an on-site wastewater
20 system in North Carolina without first obtaining a license under
21 this Article. No on-site wastewater system shall be approved by
22 the Department of Environment and Natural Resources or any agent
23 of the Department unless the on-site wastewater system is
24 constructed, installed, or repaired under the responsible charge
25 of an on-site wastewater system contractor licensed under this
26 Article.

27 "§ 87-124. Custody and use of funds.

28 The Secretary-Treasurer of the Board or other person designated
29 by the Board shall deposit all funds payable to the Board in
30 financial institutions designated by the Board as official
31 depositories for the Board. Funds shall be deposited in the name
32 of the Board and shall be used to pay all expenses incurred by
33 the Board to implement this Article or Part 9B of Article 7 of
34 Chapter 143B of the General Statutes. The Board is subject to
35 the oversight of the State Auditor pursuant to Article 5A of
36 Chapter 147 of the General Statutes.

37 "§ 87-125. Expenses and fees.

38 (a) All salaries, compensation, and expenses incurred or
39 allowed for the purposes of carrying out this Article or Part 9B
40 of Article 7 of Chapter 143B of the General Statutes shall be
41 paid by the Board exclusively out of the funds received by the
42 Board as authorized by this Article or Part 9B of Article 7 of
43 Chapter 143B of the General Statutes. No salary, expense, or
44 other obligations of the Board may be charged against the General

1 Fund. Neither the Board nor any of its officers or employees may
2 incur any expense, debt, or financial obligation binding upon the
3 State.

4 (b) All fees shall be established by rules adopted by the
5 Board. The Board shall establish fees sufficient to pay the
6 costs of administering this Article and Part 9B of Article 7 of
7 Chapter 143B of the General Statutes, but in no event shall the
8 Board charge a fee at an annual rate in excess of the following:

9	<u>(1) Application for license</u>	<u>\$ 150.00.</u>
10	<u>(2) License Renewal</u>	<u>\$ 100.00.</u>
11	<u>(3) Late renewal charge</u>	<u>\$ 25.00.</u>
12	<u>(4) Reinstatement of expired,</u>	
13	<u>revoked, or suspended license</u>	<u>\$ 150.00.</u>
14	<u>(5) Grade-step certifications</u>	<u>\$ 50.00.</u>

15 (c) The Board may issue a license to any environmental health
16 specialist while employed by a local health department without
17 charging an initial fee or a reduced renewal fee.

18 "§ 87-126. Licensing requirements.

19 (a) The Board shall issue a license in the appropriate class
20 or grade to an applicant who satisfactorily meets all the
21 following conditions:

- 22 (1) Files an application with the Board on a form
23 prescribed by the Board.
- 24 (2) Is at least 18 years of age.
- 25 (3) Is of good moral character as shown by the
26 affidavits of three persons not related to the
27 applicant for whom the applicant provided septic
28 tank contracting services as an employee of a
29 septic tank contractor or the local health
30 department.
- 31 (4) Completes a training program approved by the Board
32 for the class or grade of license for which the
33 applicant is applying.
- 34 (5) Passes an oral or written examination for the class
35 or grade of license for which the applicant is
36 applying. The examination must test the
37 proficiency of the applicant in all of the
38 following areas:
 - 39 a. Principles of public and environmental health
40 associated with on-site wastewater collection,
41 treatment, and disposal.
 - 42 b. Principles of construction and safety.
 - 43 c. Technical and practical knowledge of on-site
44 wastewater systems design and construction,

- 1 knowledge of plans and specifications,
2 principles of on-site wastewater system
3 repairs, and other matters related to systems,
4 construction, and performance.
- 5 d. Laws and rules related to the installation,
6 construction, or repair of applicable on-site
7 wastewater systems.
- 8 (6) Pays the applicable application fee set by the
9 Board.
- 10 (b) An applicant shall not be required to hold or obtain an
11 educational diploma or degree to obtain a license. If an
12 applicant meets all the conditions for licensure except for the
13 passage of the Board examination, the applicant may take the
14 examination on two more occasions without having to file for a
15 new application, pay an additional application fee, or repeat the
16 training program. If an applicant fails to pass the Board
17 examination on three successive occasions, the applicant must
18 reapply to the Board, pay the application fee, and repeat the
19 training program in order to be eligible for reconsideration for
20 a license under this Article.
- 21 (c) The licenses issued by the Board under this Article shall
22 show the full name of the registrant; show the full name of the
23 party of responsible charge, if different from the registrant;
24 contain a serial number; be signed by the Chair and
25 Secretary-Treasurer of the Board; and be embossed with the seal
26 of the Board.
- 27 (d) Holding a valid license issued by the Board is prima facie
28 evidence that the person named in the license is entitled to all
29 the rights and privileges of a licensed on-site wastewater
30 contractor at the class or grade level in which the license is
31 issued.
- 32 (e) A license to replace a lost, destroyed, or mutilated
33 license shall be issued subject to the rules adopted by the Board
34 and the payment of a fee adopted by rule by the Board.
- 35 "§ 87-127. License renewal.
- 36 (a) All licenses shall expire at an interval to be determined
37 by the Board, which interval shall be at least one year. A
38 license may be renewed prior to its expiration. To renew a
39 license, a licensee shall meet all of the following requirements:
- 40 (1) Submit an application for renewal on a form
41 prescribed by the Board.
- 42 (2) Meet the continuing education requirements
43 prescribed by the Board.
- 44 (3) Pay the license renewal fee set by the Board.

1 (b) A license that has expired may be renewed within 90 days
2 of its expiration upon payment of a late fee as set by the Board.
3 If a license is not renewed within 90 days of its expiration, the
4 license shall not be renewed, and the holder of an expired
5 license may apply for a new license.

6 "§ 87-128. Continuing education.

7 (a) The Board shall require continuing education as a
8 condition of license renewal. The Board shall determine the
9 number of hours of continuing education required, based on both:

10 (1) The class of license applied for, not to exceed 12
11 hours per year.

12 (2) The subject matter of continuing education required
13 for that class or grade of license.

14 (b) The Board shall maintain records of continuing education
15 coursework successfully completed by each licensee, including the
16 subject and number of hours of each course.

17 (c) The Board may offer continuing education, or the Board may
18 grant approval to a continuing education program or course when
19 the Board finds that the program or course offers educational
20 experience that will enhance the construction, installation, or
21 repair of on-site wastewater systems.

22 "§ 87-129. Corporations; partnerships; persons doing business
23 under trade name.

24 A license may be issued in the name of a corporation,
25 partnership, designated trade name, or an individual doing
26 business under that individual's name. The license shall be
27 issued to the entity in responsible charge. If the license is
28 held by any legal entity other than an individual, the license
29 ceases to be in force for that individual once that employment is
30 discontinued.

31 "§ 87-130. Remedies.

32 (a) Consistent with the provisions of Chapter 150B of the
33 General Statutes, the Board may deny, suspend, or revoke a
34 license of any party licensed under this Article for:

35 (1) A violation of this Article, Part 9B of Article 7
36 of Chapter 143B of the General Statutes, or a rule
37 of the Board.

38 (2) The use of any fraud or deceit in obtaining or
39 renewing a license.

40 (3) Any act of gross negligence, incompetence, or
41 misconduct in the practice of, or in carrying out,
42 the business of constructing, installing, or
43 repairing an on-site wastewater system.

1 (b) The Board may request the Attorney General to seek an
2 injunction to restrain any person, firm, partnership, or
3 corporation from violating the provisions of this Article, Part
4 9B of Article 7 of Chapter 143B of the General Statutes, or rules
5 adopted by the Board. The Attorney General may bring an action
6 for an injunction in the name of the State in the superior court
7 of any county in which the violation is occurring, in which the
8 violation resides, or in which the violator's principal place of
9 business is located. In any proceedings for an injunction, it is
10 not necessary to allege or prove either that an adequate remedy
11 at law does not exist, or that substantial or irreparable damage
12 would result from the continued violation. Members of the Board
13 shall not be personally liable for any act or omission pursuant
14 to this subsection. The Board shall not be required to post a
15 bond in connection with any action to obtain an injunction.

16 (c) The Board may establish a voluntary arbitration procedure
17 to resolve complaints concerning a licensee or work performed by
18 a licensee.

19 (d) A person who commits any one or more of the following
20 offenses is guilty of a Class 2 misdemeanor:

21 (1) Engages in or offers to engage in the construction,
22 installation, or repair of an on-site wastewater
23 system without being licensed by the Board at the
24 appropriate class or grade of license.

25 (2) Gives false or forged evidence of any kind in
26 obtaining a license.

27 (3) Falsely impersonates a licensee.

28 "§ 87-131. Attorney General as advisor.

29 The Attorney General or an attorney designated by the Attorney
30 General shall act as legal advisor to the Board.

31 "§ 87-132. Exemptions to Article.

32 This Article does not apply to general contractors licensed
33 under Article 1 of this Chapter. This Article does not apply to
34 a person who constructs, installs, or repairs a conventional
35 system that is located entirely on land owned by that person and
36 that is intended solely for use by that person and members of
37 that person's immediate household."

38 Section 3. To provide for staggered terms, initial
39 appointments under subdivisions (1) through (7) of G.S.
40 143B-301.21(b) to the On-Site Wastewater System Contractors
41 Licensing Board created by Section 1 of this act shall be as
42 follows:

- 1 (1) Initial appointments to members appointed under
2 G.S. 143B-301.21(b)(1) and G.S. 143B-301.21(b)(2)
3 shall expire on 30 June 2004.
- 4 (2) Initial appointments to members appointed under
5 G.S. 143B-301.21(b)(3) and G.S. 143B-301.21(b)(4)
6 shall expire on 30 June 2005.
- 7 (3) Initial appointments to members appointed under
8 G.S. 143B-301.21(b)(5) and G.S. 143B-301.21(b)(6)
9 shall expire on 30 June 2002.
- 10 (4) Initial appointments to members appointed under
11 G.S. 143B-301.21(b)(7) shall expire on 30 June
12 2003.

13 Section 4. The On-Site Wastewater System Contractors
14 Licensing Board shall hold an initial meeting in the City of
15 Raleigh within 30 days after all members of the Board have been
16 appointed. The member of the Board who is appointed G.S.
17 87-124(b)(9), as enacted by Section 1 of this act, shall serve as
18 temporary Chair of the Board for the purpose of convening the
19 initial meeting of the Board.

20 Section 5. This act constitutes a recent act of the
21 General Assembly within the meaning of G.S. 150B-21.1.
22 Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the
23 On-Site Wastewater System Contractors Licensing Board may adopt
24 temporary rules to implement this act until 1 October 2001.

25 Section 6. Sections 1 through 6 of this act become
26 effective when they become law, except that G.S. 87-123, as
27 enacted by Section 2 of this act, becomes effective 1 January
28 2002.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

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ERC00-SGZ-002.01 (4.25)
12-MAY-00 EZT / 14:44:18

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Brownfields Tax Incentive.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TAX INCENTIVE FOR THE REDEVELOPMENT OF
3 BROWNFIELDS PROPERTIES, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 12 of Chapter 105 of the General
7 Statutes is amended by adding a new section to read:
8 "§ 105-277.13. Taxation of improvements on brownfields.
9 (a) Qualifying improvements on brownfields properties are
10 designated a special class of property under Article V, Sec. 2(2)
11 of the North Carolina Constitution and shall be appraised,
12 assessed, and taxed in accordance with this section. An owner of
13 land is entitled to the partial exclusion provided by this
14 section for the first five taxable years beginning after the
15 first completion of any qualifying improvements made after the
16 later of July 1, 2000, or the date of the brownfields agreement.
17 After property has qualified for the exclusion provided by this
18 section, the assessor for the county in which the property is
19 located shall annually appraise the improvements made to the
20 property during the period of time that the owner is entitled to
21 the exclusion.

1 (b) For the purposes of this section, the terms "qualifying
2 improvements on brownfields properties" and "qualifying
3 improvements" mean improvements made to real property that is
4 subject to a brownfields agreement entered into by the Department
5 of Environment and Natural Resources and the owner pursuant to
6 G.S. 130A-310.32.

7 (c) The following table establishes the percentage of the
8 appraised value of the qualified improvements that is excluded
9 based on the taxable year:

10
11
12
13
14
15
16

<u>Year</u>	<u>Percent of Appraised Value Excluded</u>
<u>Year 1</u>	<u>90%</u>
<u>Year 2</u>	<u>75%</u>
<u>Year 3</u>	<u>50%</u>
<u>Year 4</u>	<u>30%</u>
<u>Year 5</u>	<u>10%."</u>

17 Section 2. This act is effective for taxes imposed for taxable
18 years beginning on or after July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S\H

D

ERC00-SGZ-012.03 (4.25)
15-MAY-00 EZT / 17:28:18

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Bullhead Mountain State Natural Area. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ADDITION OF BULLHEAD MOUNTAIN STATE
3 NATURAL AREA TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5
6 Whereas, Section 5 of Article XIV of the State
7 Constitution states that it shall be a proper function of the
8 State of North Carolina to acquire and preserve park,
9 recreational, and scenic areas and, in every other appropriate
10 way, to preserve as a part of the common heritage of this State
11 its open lands and places of beauty; and,
12 Whereas, the General Assembly enacted the State Parks
13 Act in 1987, declaring that the State of North Carolina offers
14 unique archaeological, geological, biological, scenic, and
15 recreational resources, and that such resources are part of the
16 heritage of the people of the State to be preserved and managed
17 by those people for their use and for the use of their visitors
18 and descendants; and,

1 Whereas, Bullhead Mountain in Alleghany County contains
2 examples of outstanding scenic beauty; is a key component of a
3 major hawk migration corridor through North Carolina; would
4 provide outstanding opportunities for the public to observe the
5 natural phenomenon of bird migration; and has been found to
6 possess biological, scenic, and recreational resources of
7 statewide significance; and,

8 Whereas, the North Carolina State Office of the National
9 Audubon Society has expressed particular interest in the
10 protection of Bullhead Mountain and is willing to partner with
11 the State to provide long term management for the site; Now,
12 therefore,

13 The General Assembly of North Carolina enacts:

14 Section 1. The General Assembly authorizes the
15 Department of Environment and Natural Resources to add Bullhead
16 Mountain State Natural Area to the State Parks System as provided
17 in G.S. 113-44.14(b).

18 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

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ERC00-SGZ-003.03
15-MAY-00 EZT / 15:23:30

ATTENTION: This is a draft and is not ready for introduction.(Sh

ort Title: Cullasaja River Designation.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DESIGNATE A 7.5 MILE SECTION OF THE CULLASAJA RIVER AS
3 A SCENIC RIVER IN THE NORTH CAROLINA NATURAL AND SCENIC RIVER
4 SYSTEM, AS RECOMMENDED BY THE ENVIRONMNETAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 113A-35.2 reads as rewritten:
7 "§ 113A-35.2. Additional components.
8 That segment of the Linville River beginning at the State
9 Highway 183 bridge over the Linville River and extending
10 approximately 13 miles downstream to the boundary between the
11 United States Forest Service lands and lands of Duke Power
12 Company (latitude 35° 50' 20") shall be a natural river area and
13 shall be included in the North Carolina Natural and Scenic River
14 System.
15 That segment of the Horsepasture River in Transylvania County
16 extending downstream from Bohaynee Road (N.C. 281) to Lake
17 Jocassee shall be a natural river and shall be included in the
18 North Carolina Natural and Scenic Rivers System.
19 That segment of the Lumber River extending from county road
20 1412 in Scotland County downstream to the North Carolina-South
21 Carolina state line, a distance of approximately 102 river miles,
22 shall be included in the Natural and Scenic Rivers System and

1 classified as follows: from county road 1412 in Scotland County
2 downstream to the junction of the Lumber River and Back Swamp
3 shall be classified as scenic; from the junction of the Lumber
4 River and Back Swamp downstream to the junction of the Lumber
5 River and Jacob Branch and the river within the Fair Bluff town
6 limits shall be classified as recreational; and from the junction
7 of the Lumber River and Jacob Branch downstream to the North
8 Carolina-South Carolina state line, excepting the Fair Bluff town
9 limits, shall be classified as natural.

10 That segment of the Cullasaja River in Macon County beginning
11 at the United States Forest Service property boundary below the
12 spillway of the Lake Sequoyah Dam and extending downstream
13 through the Cullasaja Gorge within the Nantahala National Forest
14 for 7.5 miles shall be a scenic river in the North Carolina
15 Natural and Scenic River System."

16 Section 2. This act does not create an additional water
17 quality standard or basis for decision-making for any increase in
18 the quantity of waste discharged from the wastewater treatment
19 plant that the Town of Highlands currently operates and that
20 discharges into the Cullasaja River.

21 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

ERC00-SGZ-011.02 (4.25)
15-MAY-00 EZT / 17:20:34

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Lea Island State Natural Area.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ADDITION OF LEA ISLAND STATE NATURAL AREA
3 TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.
5 Whereas, Section 5 of Article XIV of the State
6 Constitution states that it shall be a proper function of the
7 State of North Carolina to acquire and preserve park,
8 recreational, and scenic areas and in every other appropriate
9 way, to preserve as a part of the common heritage of this State
10 its open lands and places of beauty; and,
11 Whereas, the General Assembly enacted the State Parks
12 Act in 1987, declaring that the State of North Carolina offers
13 unique archaeological, geological, biological, scenic, and
14 recreational resources, and that such resources are part of the
15 heritage of the people of the State to be preserved and managed
16 by those people for their use and for the use of their visitors
17 and descendants; and
18 Whereas, Lea Island in Pender County is one of the few
19 remaining undeveloped barrier islands on the North Carolina

1 coast; contains examples of high quality coastal natural
2 communities; provides excellent breeding and migration habitat
3 for wildlife, including several rare species; and has been found
4 to possess biological and scenic resources of statewide
5 significance; and,

6 Whereas, the North Carolina State Office of the National
7 Audubon Society has expressed particular interest in the
8 protection of Lea Island and is willing to partner with the State
9 to provide long term management for the site; Now, therefore,
10 The General Assembly of North Carolina enacts:

11 Section 1. The General Assembly authorizes the
12 Department of Environment and Natural Resources to add Lea Island
13 State Natural Area to the State Parks System as provided in G.S.
14 113-44.14(b).

15 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

S/H

H

ERC00-SGZ-018.02 (5.9)
15-MAY-00 EZT / 15:08:24

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Million Acre Open Space Goal

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE, SUPPORT, AND ACCELERATE THE PERMANENT
3 PROTECTION OF FARMLAND, FORESTLAND, PARKLAND, GAMELAND,
4 WETLANDS, OPEN SPACE, AND CONSERVATION LANDS IN NORTH CAROLINA,
5 AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
6 Whereas, the citizens of North Carolina have committed
7 themselves to conserve and protect their lands and waters in
8 numerous ways. This commitment is stated in Article XIV, Section
9 5 of the North Carolina Constitution and finds expression in the
10 many State, local, and private programs that provide for the
11 acquisition and protection of lands to protect the water quality,
12 wetlands, drinking water sources, natural beauty, and ecological
13 diversity of North Carolina as well as provide opportunities for
14 public recreation; and
15 Whereas, despite these many disparate programs, the
16 General Assembly finds that the quality of life that North
17 Carolinians have come to expect is threatened by the continued
18 alteration and development of the State's natural areas, the loss
19 of its farmlands and forests, the shrinking amount of open space

1 in its urban areas, and the loss of cultural and historic sites.
2 As the State's population continues to expand, loss of open
3 spaces to development will continue to increase, damaging North
4 Carolina's economy and environment; and

5 Whereas, the General Assembly further finds that
6 additional permanent protection of lands for environmental
7 protection and public use is needed to complement our State's
8 economic growth and to meet our citizens' needs for generations
9 to come; Now, therefore,

10 The General Assembly of North Carolina enacts:

11 Section 1. The General Assembly reaffirms the strong
12 desire of the State and its citizens to conserve and protect the
13 lands needed to provide a high-quality environment for present
14 and future generations, while also preserving, to the maximum
15 extent possible, the liberty of each individual to pursue their
16 interests.

17 Section 2. Chapter 113A of the General Statutes is
18 amended by adding a new Article to read:

19 "Article 17.

20 "Conservation, Farmland, and Open Space Protection and
21 Coordination"

22 "§ 113A-240. Intent.

23 (a) It is the intent of the General Assembly to continue to
24 support and accelerate the State's programs of land conservation
25 and protection, to find means to assure and increase funding for
26 these programs, to support the long term management of
27 conservation lands acquired by the State, and to improve the
28 coordination, efficiency, and implementation of the various State
29 and local land protection programs operating in North Carolina.

30 (b) It is the further intent of the General Assembly that the
31 State's lands should be protected in a manner that minimizes any
32 adverse impacts on the ability of local governments to carry out
33 their broad mandates.

34 "§113A-241. State to Preserve One Million Acres.

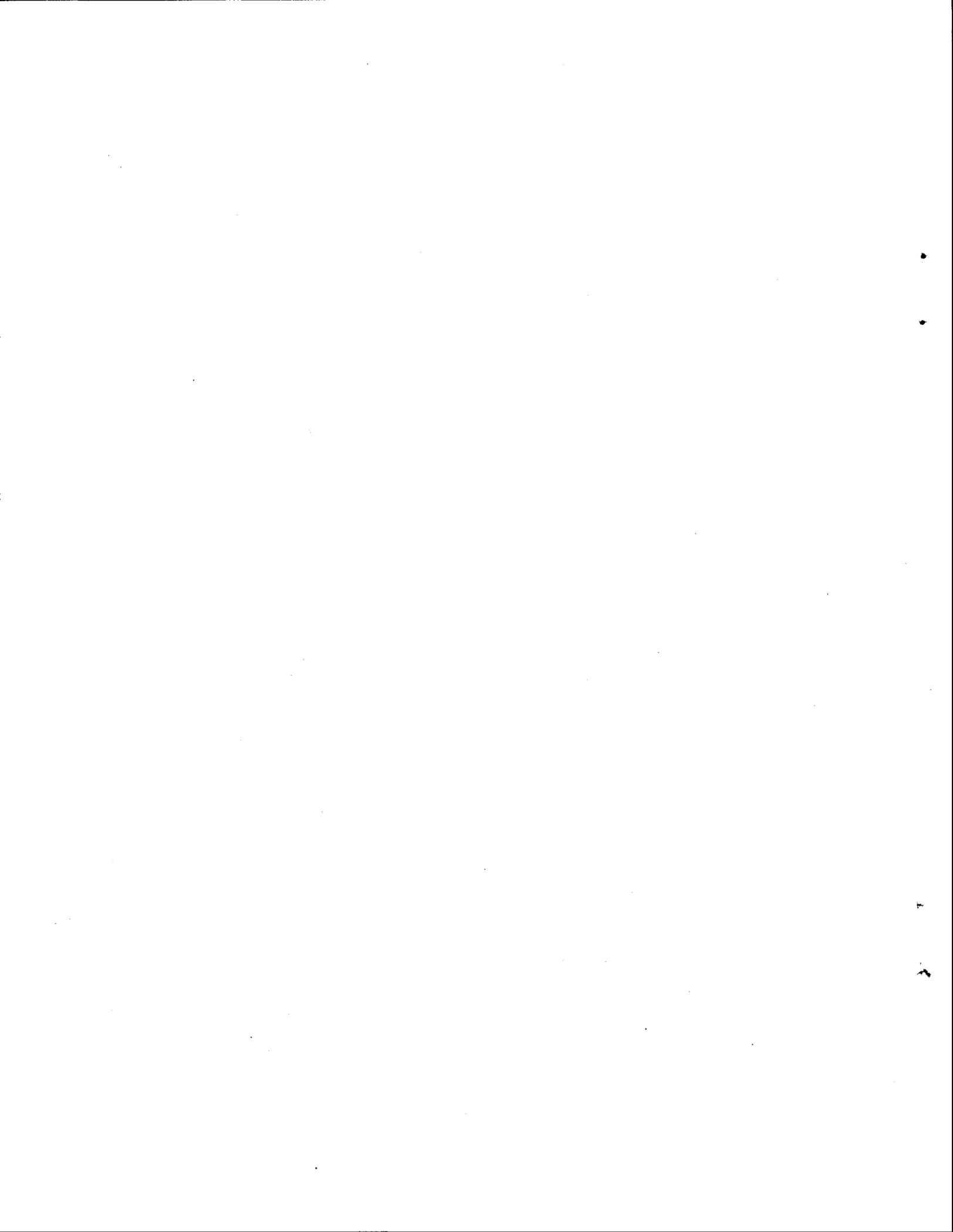
35 (a) The State of North Carolina shall encourage, facilitate,
36 plan, coordinate, and support appropriate federal, State, local,
37 and private land protection efforts so that an additional one
38 million acres of farmland, open space, and conservation lands in
39 the State are permanently protected by December 31, 2009. These
40 lands shall be protected by acquisition in fee simple or by

1 acquisition of perpetual conservation easements by public
2 conservation organizations or by private entities that are
3 organized to receive and administer lands for conservation
4 purposes.

5 (b) The Secretary of Environment and Natural Resources shall
6 lead the effort to add one million acres to the State's protected
7 lands and shall plan and coordinate with other public and private
8 organizations and entities that are receiving and administering
9 lands for conservation purposes."

10 Section 3. The Secretary of Environment and Natural
11 Resources shall report to the Governor and the Environmental
12 Review Commission annually beginning on September 1, 2000, on the
13 State's progress towards attaining the goal established in
14 Section 2 of this act.

15 Section 4. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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BILL DRAFT ERC00-SGZ-008.03 (5.4)
15-MAY-00 EZT / 17:38:11

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Mountains to Sea State Park Trail. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ADDITION OF THE MOUNTAINS TO SEA STATE
3 PARK TRAIL TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5

6 Whereas, Section 5 of Article XIV of the State
7 Constitution states that it shall be a proper function of the
8 State of North Carolina to acquire and preserve park,
9 recreational, and scenic areas and, in every other appropriate
10 way, to preserve as a part of the common heritage of this State
11 its open lands and places of beauty; and,

12 Whereas, the General Assembly enacted the State Parks
13 Act in 1987, declaring that the State of North Carolina offers
14 unique archaeological, geological, biological, scenic, and
15 recreational resources, and that such resources are part of the
16 heritage of the people of the State to be preserved and managed
17 by those people for their use and for the use of their visitors
18 and descendants; and

1 Whereas, a Mountains to Sea Trail across North Carolina
2 would offer outstanding recreational opportunities to the State's
3 citizens; would protect riparian buffers and corridors of
4 wildlife habitat along its route; and would possess biological,
5 scenic, and recreational resources of statewide significance;

6 Now, therefore,

7 The General Assembly of North Carolina enacts:

8 Section 1. The General Assembly authorizes the
9 Department of Environment and Natural Resources to add the
10 Mountains to Sea State Park Trail to the State Parks System as
11 provided in G.S. 113-44.14(b). The State Park Trail shall be
12 comprised only of those lands or easements which are or will be
13 allocated for management to the Division of Parks and Recreation
14 for this purpose. The Division shall promote, encourage, and
15 facilitate the establishment of dedicated connecting trails
16 through lands managed by other governmental agencies and non-
17 profit organizations in order to form a continuous trail across
18 the State.

19 Section 2. Article 2 of Chapter 113 of the General
20 Statutes is amended by adding a new section to read:

21 "§ 113-34.1. Power to acquire conservation lands not included in
22 the State Parks System.

23 The Department of Administration may acquire and allocate to
24 the Department of Environment and Natural Resources for
25 management by the Division of Parks and Recreation lands that the
26 Department of Environment and Natural Resources finds are
27 important for conservation purposes but which are not included in
28 the State Parks System. Lands acquired pursuant to this section
29 are not subject to the provisions of Article 2C of Chapter 113 of
30 the General Statutes and may be traded or transferred as
31 necessary to protect, develop, and manage the Mountains to Sea
32 State Park Trail, other State Parks, or other conservation
33 lands."

34 Section 3. This act is effective when it becomes law.

1 (b) It shall be unlawful for any person, firm, or corporation
2 to abandon or cause to be abandoned, any vessel in or upon the
3 coastal fishing waters of the State or upon State-owned submerged
4 lands. The last owner of record of a vessel at the time it was
5 abandoned shall be presumed to be the person who abandoned the
6 vessel or caused its abandonment.

7 (c) A vessel shall be presumed to be abandoned in violation of
8 this section when the vessel is either left unattended for more
9 than 30 consecutive days or the vessel is left in a wrecked,
10 junked, or substantially dismantled condition without the consent
11 of the Secretary of Environment Natural Resources.

12 (d) Any person, firm, or corporation who violates the
13 provisions of subsection (b) of this section shall be guilty of a
14 Class 2 misdemeanor. After the expiration of 30 days from the
15 receipt or publication of notice by Secretary under subdivision
16 (e)(2) of this section, each day the vessel remains in violation
17 of this section shall constitute a separate offense. It is a
18 defense to prosecution for a violation of this section if all of
19 the following requirements are satisfied:

20 (1) The vessel was abandoned due to a natural disaster
21 or other act of God occasioned exclusively by
22 violence of nature without interference of any
23 human agency and that could not have been prevented
24 or avoided by the exercise of due care or
25 foresight.

26 (2) The vessel has been removed from the waters of the
27 State in compliance with subdivision (e)(2) of this
28 section.

29 (3) The affected area has been restored to the
30 satisfaction of the Secretary.

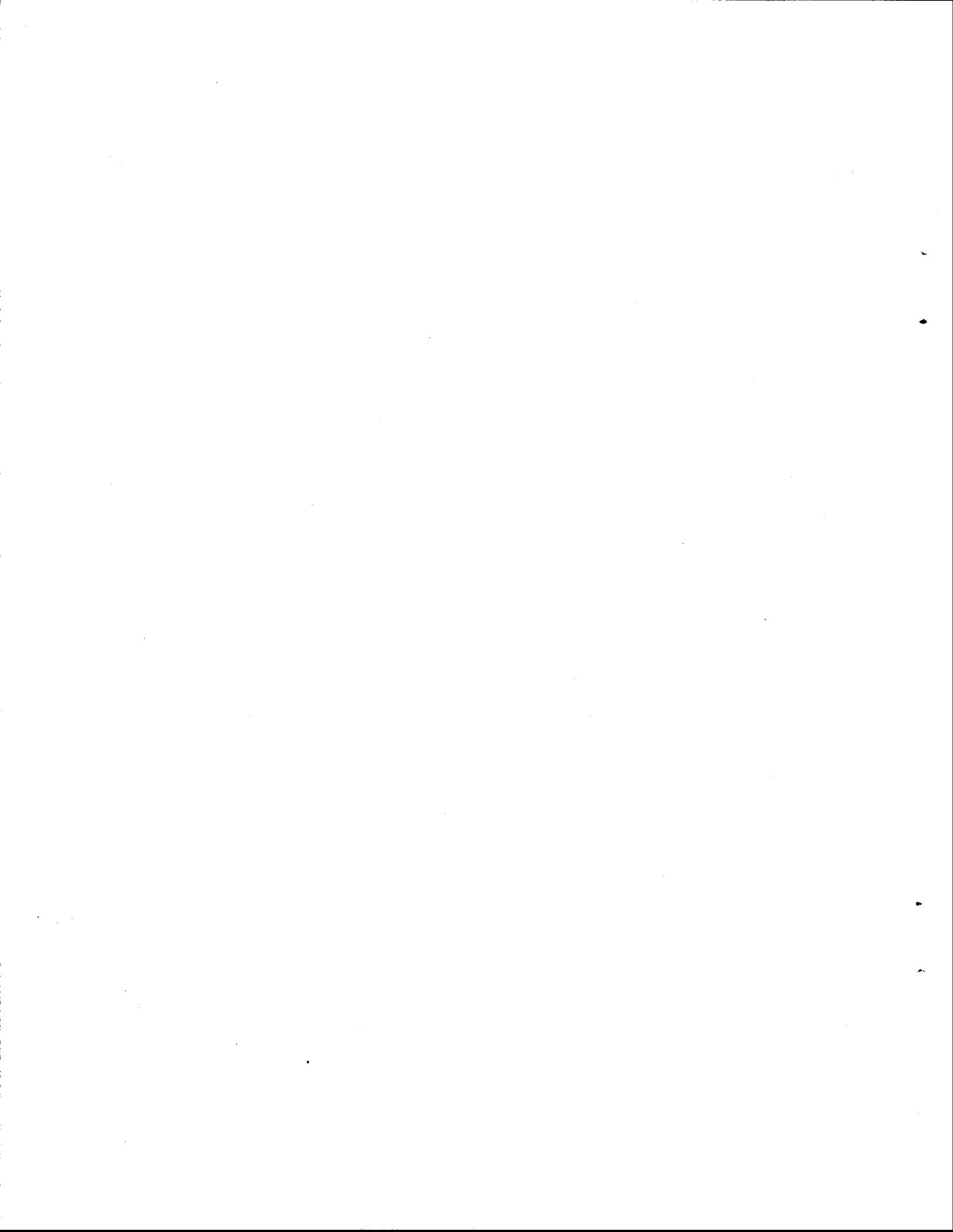
31 (e) The Department may investigate a report that a vessel has
32 been abandoned in violation of this section and may remove or
33 require the removal of an abandoned vessel as provided in this
34 subsection.

35 (1) If the Secretary determines that an abandoned
36 vessel is a hazard to safety, navigation, human
37 health, or the environment, the owner of the vessel
38 shall be deemed to have appointed the Secretary his
39 or her agent for the purposes of removal of the
40 vessel. If the Secretary determines that the

- 1 vessel constitutes an imminent hazard to safety,
2 navigation, human health, or the environment, the
3 Secretary may immediately remove the vessel from
4 waters of the State prior to giving the notice
5 required by subdivision (2) of this subsection.
- 6 (2) The Department may require removal of the vessel by
7 giving notice to the registered owner of the vessel
8 or other responsible party. The notice shall
9 require the owner or other responsible party to
10 respond within 10 days and to remove the vessel
11 from the waters of the State within 30 days of the
12 receipt of the notice. Notice shall be given by
13 certified mail, return receipt requested, or as
14 provided in G.S. 1A-1, Rule 4(j) of the Rules of
15 Civil Procedure. The notice shall be in writing to
16 the person in whose name the vessel was last
17 registered or other responsible party at the last
18 address of record. If the value of the vessel is
19 more than \$100 and the identity of the owner cannot
20 be determined, notice by one publication in a
21 newspaper of general circulation in the county
22 where the vessel is located shall be sufficient to
23 meet all requirements of notice. After giving the
24 required notice, the Secretary may proceed to
25 remove the vessel from waters of the State.
- 26 (3) The owner of the abandoned vessel or responsible
27 party shall be liable for any and all costs
28 incurred by the State in removing the vessel,
29 including costs to restore any damage to marine,
30 estuarine, or fisheries resources or lands held by
31 the State in public trust. The Secretary may
32 authorize or contract with any federal, State,
33 county, or municipal authority or private
34 enterprise for removal of abandoned vessels,
35 restoration of resources, or any other services
36 necessary to remove, store, or dispose of abandoned
37 vessels and restore affected areas. The method of
38 removal, storage, and disposal of the abandoned
39 vessel, whether by the owner, a third party, or the

- 1 State, must comply with all applicable federal and
2 State laws, regulations, and rules.
- 3 (4) The Secretary is authorized to sell abandoned
4 vessels, their cargo, tackle, and equipment. The
5 Secretary may provide for a public sale of the
6 property, including public notice of the
7 description of the property prior to the time set
8 for sale. The procedure may include turning the
9 property to be sold over to some other agency for
10 sale, provided that there is proper accounting for
11 the net proceeds of the sale. In the case of
12 property that cannot lawfully be sold or is
13 unlikely to sell for a sufficient amount to offset
14 the costs of sale, the Secretary may provide either
15 for destruction or disposal of the property or
16 legitimate utilization of the property by some
17 public agency. Net proceeds of the sale shall be
18 used to reimburse the State for costs incurred in
19 removal, storage, and sale of the vessel,
20 notification of the owner, and restoration of the
21 environment. Any excess proceeds shall be refunded
22 to the registered owner, if his or her identity and
23 address is known. Prior to sale, the registered
24 owner of the abandoned vessel or any person with an
25 interest in the property may redeem the property by
26 reimbursing the State for all costs incurred in
27 removing and storing the vessel, notifying the
28 owner, and restoring the environment.
- 29 (f) The Secretary may, either before or after the institution
30 of proceedings under subsection (e) of this section, institute a
31 civil action in the superior court in the county where the vessel
32 is located or where the owner or other responsible party resides
33 for removal of the vessel, damages, injunctive relief, recovery
34 of the costs of removal, storage and sale of the vessel, and
35 other relief as the court may deem proper, to prevent or recover
36 for any damage to any lands or property which the State holds in
37 public trust and to restrain any violation of this section.
- 38 (g) The provisions of this section shall be implemented by the
39 Department of Environment and Natural Resources in cooperation
40 with the Wildlife Resources Commission."

1 Section 2. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-SGZ-009.01 (5.4)
16-MAY-00 EZT / 13:56:43

ATTENTION: This is a draft and is not ready for introduction.

Short Title: White Goods Sunset Repeal.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE SUNSET OF THE WHITE GOODS TAX AND TO DIRECT
3 THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY
4 ISSUES RELATED TO THE SCRAP TIRE DISPOSAL TAX AND THE WHITE
5 GOODS DISPOSAL TAX, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
6 COMMISSION.
7 The General Assembly of North Carolina enacts:
8 Section 1. Section 11 of Chapter 471 of the 1993
9 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the
10 1993 Session Laws and Section 7 of S.L. 1998-24, reads as
11 rewritten:
12 "Sec. 11. Sections 1 through 5 of this act and this section
13 become effective January 1, 1994. ~~Section 3 of this act expires~~
14 ~~July 1, 2001. Section 6 of this act becomes effective July 1,~~
15 ~~2001. Sections 7, 8, and 9 of this act become effective July 1,~~
16 ~~2002.~~
17 ~~The repeal of the tax imposed by Section 3 of this act does not~~
18 ~~affect the rights or liabilities of the State, a taxpayer, or~~
19 ~~another person that arose during the time the tax was in effect.~~
20 The first report submitted by the Department to the Environmental
21 Review Commission under G.S. 130A-309.85, as enacted by this act,
22 shall cover the period from January 1, 1994, to June 30, 1994."

1 Section 2. The Department of Environment and Natural
2 Resources shall study issues related to the scrap tire disposal
3 tax and the white goods disposal tax. This study shall include
4 an evaluation of whether the amount of the scrap tire disposal
5 tax and the amount of the white goods disposal tax should be
6 altered and whether the distribution of the proceeds of these
7 taxes should be reapportioned. The Department shall report its
8 findings and recommendations, including any legislative
9 proposals, to the Environmental Review Commission no later than
10 October 1, 2000.

11 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H/S

D

BILL DRAFT ERC00-SBXZ-005.02 (4.25)
16-MAY-00 EZT / 20:49:23

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Dry-Cleaning Solvent Cleanup Amends. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A TEMPORARY ENVIRONMENTAL SURTAX TO FUND
3 CLEANUP OF DRY-CLEANING SOLVENT CONTAMINATION; TO DESIGNATE THE
4 STATE SALES TAX REVENUE FROM DRY-CLEANING AND LAUNDRY SERVICES
5 FOR THE DRY-CLEANING SOLVENT CLEANUP FUND; TO AMEND THE
6 DRY-CLEANING SOLVENT CLEANUP ACT OF 1997 TO REPEAL THE
7 REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR DRY-CLEANING
8 FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION
9 FACILITIES; TO ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO
10 ENTER INTO CONTRACTS WITH PRIVATE CONTRACTORS FOR ASSESSMENT
11 AND REMEDIATION ACTIVITIES AT DRY-CLEANING FACILITIES AND
12 WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES; TO
13 DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO
14 STUDY THE USE OF DRY-CLEANING SOLVENTS IN NORTH CAROLINA, AND
15 TO MAKE OTHER CHANGES IN THE DRY-CLEANING SOLVENT CLEANUP ACT
16 OF 1997, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
17 The General Assembly of North Carolina enacts:
18 Section 1.1. G.S. 105-164.4(a)(4) reads as rewritten:
19 "(4) Every person engaged in the business of ~~operating a~~
20 ~~dry cleaning, pressing, or hat blocking~~
21 ~~establishment, a laundry, or any similar business,~~
22 ~~engaged in the business of~~ renting clean linen or

1 towels or wearing apparel, or any similar business,
2 or engaged in the business of soliciting ~~cleaning,~~
3 ~~pressing, hat blocking, laundering or linen rental~~
4 business for any of these businesses, is considered
5 a retailer under this Article. A tax at the
6 general rate of tax is levied on the gross receipts
7 derived by these retailers from services rendered
8 in engaging in any of the occupations or businesses
9 named in this subdivision. ~~The tax imposed by this~~
10 ~~subdivision does not apply to receipts derived from~~
11 ~~coin or token operated washing machines,~~
12 ~~extractors, and dryers.~~ The tax imposed by this
13 subdivision does not apply to gross receipts
14 derived from services performed for resale by a
15 retailer that pays the tax on the total gross
16 receipts derived from the services."

17 Section 1.2. G.S. 105-164.4(a) is amended by adding a
18 new subdivision to read:

19 "(4d) Every person engaged in the business of
20 operating a dry-cleaning, pressing, or
21 hat-blocking establishment, or laundry, or any
22 similar business, or engaged in the business
23 of soliciting cleaning, pressing,
24 hat-blocking, or laundering for any of these
25 businesses is considered a retailer for the
26 purposes of this Article. A tax at a rate of
27 general rate is levied on the gross receipts
28 derived by these retailers from services
29 rendered in engaging in any of the occupations
30 or businesses named in this subdivision. The
31 tax imposed by this subdivision does not apply
32 to receipts derived from coin or
33 token-operated washing machines, extractors,
34 and dryers. The tax imposed by this
35 subdivision does not apply to gross receipts
36 derived from services performed for resale by
37 a retailer that pays the tax on the total
38 gross receipts derived from the services."

39 Section 1.3. G.S. 105-164.7 reads as rewritten:

40 "§ 105-164.7. Sales Tax Part of Purchase Price.

41 Every retailer engaged in the business of selling or delivering
42 or taking orders for the sale or delivery of tangible personal
43 property for storage, use or consumption in this State subject to
44 the tax established by G.S. 105-164.4 shall at the time of

1 selling or delivering or taking an order for the sale or delivery
2 of ~~said~~ tangible personal property or service subject to the tax
3 established by G.S. 105-164.4, or collecting the sales price
4 thereof or any part thereof, add to the sales price of such
5 tangible personal property or service the amount of the tax on
6 the sale thereof and when so added said tax shall constitute a
7 part of such purchase price, shall be a debt from the purchaser
8 to the retailer until paid and shall be recoverable at law in the
9 same manner as other debts. Said tax shall be stated and charged
10 separately from the sales price and shown separately on the
11 retailer's sales records and shall be paid by the purchaser to
12 the retailer as trustee for and on account of the State and the
13 retailer shall be liable for the collection thereof and for its
14 payment to the Secretary and the retailer's failure to charge to
15 or collect said tax from the purchaser shall not affect such
16 liability. It is the purpose and intent of this Article that the
17 tax herein levied and imposed shall be added to the sales price
18 of tangible personal property or service when sold at retail and
19 thereby be borne and passed on to the customer, instead of being
20 borne by the retailer."

21 Section 1.4.(a) Article 5D of Chapter 105 of the
22 General Statutes reads as rewritten:

23 "ARTICLE 5D.
24 ~~Dry-cleaning~~ Dry-Cleaning Solvent Tax Cleanup."

25 Section 1.4(b) Article 5D of Chapter 105 of the General
26 Statutes, as amended by Section 1.3(a) of this act, is further
27 amended by designating the provisions thereof as a new Part, to
28 be entitled:

29 "Part 1. Dry-Cleaning Solvent Tax."

30 Section 1.5. Article 5D of Chapter 105 of the General
31 Statutes, as amended by Sections 1.4(a) and 1.4(b) of this act,
32 is further amended by adding a new Part to read:

33 "Part 2. Environmental Surtax on Dry-Cleaning and
34 Laundry Businesses."

35 "§ 105-187.35. Definitions."

36 The definitions set out in G.S. 105-164.3 apply to this
37 Article, except that the term 'sale' does not include lease or
38 rental.

39 "§ 105-187.36. Tax imposed."

40 A privilege surtax is imposed on every person engaged in the
41 business of operating a dry-cleaning, pressing, or hat-blocking
42 establishment, or laundry, or any similar business, or engaged in
43 the business of soliciting cleaning, pressing, hat-blocking, or
44 laundering business for any of these businesses at the rate of

1 one cent (1¢) for every two cents (2¢) of tax payable pursuant to
2 G.S. 105-164.4(a)(4d).

3 "§ 105-187.37. Administration.

4 Except as otherwise provided in this Article, the tax imposed
5 by this Article shall be collected and administered in the same
6 manner as the State sales tax imposed by Article 5 of this
7 Chapter.

8 "§ 105-187.38. Use of tax proceeds.

9 The Secretary shall deposit the taxes collected under this
10 Article in the Dry-Cleaning Solvent Cleanup Fund established by
11 G.S. 143-215.104C."

12 Section 1.6. Article 5 of Chapter 105 of the General
13 Statutes is amended to add a new section to read:

14 "§ 105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup
15 Fund.

16 At the end of each quarter, the Secretary shall transfer to the
17 Dry-Cleaning Solvent Cleanup Fund established under G.S.
18 143-215.104C an amount equal to the State sales and use taxes
19 collected under G.S. 105-164.4(a)(4d), as determined by the
20 Secretary based on available data."

21 Section 1.7. G.S. 105-187.31 reads as rewritten:

22 "§ 105-187.31. (Repealed effective January 1, 2010.) Tax
23 imposed.

24 A privilege tax is imposed on a dry-cleaning solvent retailer
25 at a flat rate for each gallon of dry-cleaning solvent sold by
26 the retailer to a dry-cleaning facility. An excise tax is imposed
27 on dry-cleaning solvent purchased outside the State for storage,
28 use, or consumption by a dry-cleaning facility in this State. The
29 rate of the privilege tax and the excise tax is ~~five dollars and~~
30 ~~eighty five cents (\$5.85)~~ seven dollars and fifty cents (\$7.50)
31 for each gallon of dry-cleaning solvent that is chlorine-based
32 and ~~eighty cents (80¢)~~ one dollar (\$1.00) for each gallon of
33 dry-cleaning solvent that is hydrocarbon-based. These taxes are
34 in addition to all other taxes."

35 Section 2. G.S. 143-215.104C(b) reads as rewritten:

36 "(b) Sources of Revenue. -- The following revenue is credited
37 to the Fund:

- 38 (1) Dry-cleaning solvent taxes collected under Article
39 5D of Chapter 105 of the General Statutes.
- 40 (2) Recoveries made pursuant to G.S. 143-215.104N and
41 G.S. 143-215.104O.
- 42 (3) Gifts and grants made to the Fund.
- 43 (4) Revenues credited to the Fund under G.S.
44 105-164.44E."

1 Section 3. G.S. 143-215.104B(b)(20), 143-215.104E,
 2 143-215.104F(b)(3), 143-215.104F(d)(3), 143-215.104F(g),
 3 143-215.104J(a)(5), 143-215.104P(a)(1), and Section 3 of S.L.
 4 1997-392 are repealed.

5 Section 4. G.S. 143-215.104F(f) reads as rewritten:
 6 "(f) Financial Responsibility Requirements. -- Each
 7 potentially responsible person who petitions the Commission to
 8 enter into a dry-cleaning solvent assessment agreement or
 9 dry-cleaning solvent remediation agreement shall accept written
 10 responsibility in the amount specified in this section for the
 11 assessment or remediation of the dry-cleaning solvent
 12 contamination identified in the petition. If two or more
 13 potentially responsible persons petition the Commission jointly,
 14 the requirements below shall be the aggregate requirements for
 15 the financial responsibility of all potentially responsible
 16 persons who are party to the petition. Unless an alternative
 17 arrangement is agreed to by co-petitioners, the financial
 18 responsibility requirements of this section shall be apportioned
 19 equally among the co-petitioners. ~~The requirements in this~~
 20 ~~subsection shall be in addition to any insurance or other~~
 21 ~~financial responsibility, including deductibles or retentions,~~
 22 ~~established pursuant to G.S. 143-215.104E.~~ The financial
 23 responsibility required shall be as follows:

Facility or Abandoned Site Where Release Occurred	Costs
Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	\$5,000
Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to	\$10,000
Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to	\$15,000

1
2 ~~Wholesale distribution facilities~~ \$25,000
3
4 ~~Abandoned dry-cleaning facility sites~~ \$50,000
5

6 (1) For dry-cleaning facilities owned by persons who
7 employ fewer than five full-time employees, or the
8 equivalent, in activities related to dry-cleaning
9 operations during the calendar year next preceding
10 the date of the petition, the first five thousand
11 dollars (\$5,000) of the costs of assessment or
12 remediation and one percent (1%) of costs of
13 assessment or remediation in excess of two hundred
14 thousand dollars (\$200,000), but not more than one
15 million dollars (\$1,000,000).

16 (2) For dry-cleaning facilities owned by persons who
17 employ at least five but fewer than 10 full-time
18 employees, or the equivalent, in activities related
19 to dry-cleaning operations during the calendar year
20 next preceding the date of the petition, the first
21 ten thousand dollars (\$10,000) of the costs of
22 assessment or remediation, two percent (2%) of
23 costs of assessment or remediation in excess of two
24 hundred thousand dollars (\$200,000) but not more
25 than five hundred thousand dollars (\$500,000), and
26 one percent (1%) of costs of assessment or
27 remediation in excess of five hundred thousand
28 dollars (\$500,000) but not more than one million
29 dollars (\$1,000,000).

30 (3) For dry-cleaning facilities owned by persons who
31 employ 10 or more full-time employees, or the
32 equivalent, in activities related to dry-cleaning
33 operations during the calendar year next preceding
34 the date of the petition, the first fifteen
35 thousand dollars (\$15,000) of the costs of
36 assessment or remediation, three percent (3%) of
37 costs of assessment or remediation in excess of two
38 hundred thousand dollars (\$200,000) but not more
39 than five hundred thousand dollars (\$500,000), and
40 one percent (1%) of costs of assessment or
41 remediation in excess of five hundred thousand
42 dollars (\$500,000) but not more than one million
43 dollars (\$1,000,000).

1 (4) For wholesale distribution facilities and abandoned
2 dry-cleaning facility sites, the first twenty-five
3 thousands dollars (\$25,000) of the costs of
4 assessment or remediation, three percent (3%) of
5 the costs of assessment or remediation in excess of
6 two hundred thousand dollars (\$200,000) but not
7 more than five hundred thousand dollars (\$500,000),
8 and one percent (1%) of costs of assessment or
9 remediation in excess of five hundred thousand
10 dollars (\$500,000) but not more than one million
11 dollars (\$1,000,000)."

12 Section 5. G.S. 143-215.104C reads as rewritten:

13 "§ 143-215.104C. (Repealed effective January 1, 2012)
14 Dry-Cleaning Solvent Cleanup Fund.

15 (a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is
16 established as a special revenue fund to be administered by the
17 Commission. Accordingly, revenue in the Fund at the end of a
18 fiscal year does not revert and interest and other investment
19 income earned by the Fund must be credited to it. The Fund is
20 created to provide revenue to implement this Part.

21 (b) Sources of Revenue. -- The following revenue is credited
22 to the Fund:

23 (1) Dry-cleaning solvent taxes collected under Article
24 5D of Chapter 105 of the General Statutes.

25 (2) Recoveries made pursuant to G.S. 143-215.104N and
26 G.S. 143-215.104O.

27 (3) Gifts and grants made to the Fund.

28 (c) Disbursements. -- A claim filed against the Fund may be
29 paid only from monies in the Fund and only in accordance with the
30 provisions of this Part. Any obligation to pay or reimburse
31 claims against the Fund shall be expressly contingent upon
32 availability of monies in the Fund. Neither the State nor any of
33 its agencies shall have any obligation to pay or reimburse any
34 costs for which monies are not available in the Fund. The
35 provisions of this Part shall not constitute a contract, either
36 express or implied, to pay or reimburse costs in excess of the
37 monies available in the Fund. In making disbursements from the
38 Fund, the Commission shall ~~pay the claims with the highest~~
39 ~~priority before claims of lower priority, and claims of equal~~
40 ~~priority in the order in which the facility or abandoned site was~~
41 certified obligate monies to facilities or sites with higher
42 priority before facilities or sites of lower priority, and
43 facilities or sites with equal priority in the order in which the
44 facilities or sites were prioritized until the revenue is

1 exhausted. Consistent with the provisions of this Part, the
2 Commission may disburse monies from the Fund to abate imminent
3 hazards caused by dry-cleaning solvent contamination at abandoned
4 dry-cleaning facility sites that have not been certified. Up to
5 twenty percent (20%) of the amount of revenue credited to the
6 Fund in a year may be used to defray costs incurred by the
7 Department and the Attorney General's Office in connection with
8 administration of the program described in this Part, including
9 oversight of response activities."

10 Section 6. G.S. 143-215.104D(a) reads as rewritten:

11 "(a) Administrative Functions. -- The Commission may
12 delegate any or all of the powers enumerated in this subsection
13 to the ~~Department or engage a private contractor or contractors~~
14 ~~to carry out the activities enumerated in this subsection. If the~~
15 ~~Commission engages a private contractor to carry out the~~
16 ~~functions enumerated in subdivisions (1) through (6) of this~~
17 ~~subsection, no action of the contractor shall be effective until~~
18 ~~ratified by the Commission.~~ Department. The Commission shall:

- 19 (1) Accept petitions for certification and petitions to
20 enter into dry-cleaning solvent assessment
21 agreements or remediation agreements under this
22 Part.
- 23 (2) Prioritize certified dry-cleaning facilities,
24 certified wholesale distribution facilities, or
25 certified abandoned dry-cleaning facility sites for
26 the initiation of assessment or remediation
27 activities that are reimbursable from the Fund.
- 28 (3) Develop forms to be used by persons applying for
29 reimbursement of assessment or remediation costs.
- 30 (4) Schedule funding of assessment and remediation
31 activities.
- 32 (5) Determine whether assessment or remediation is
33 necessary at a site at which dry-cleaning solvent
34 contamination has occurred.
- 35 (5a) Enter into contracts with private contractors for
36 assessment and remediation activities at certified
37 dry-cleaning facilities, certified wholesale
38 distribution facilities, or certified abandoned
39 dry-cleaning facility sites.
- 40 (6) Determine that all necessary assessment and
41 remediation has been completed at a contamination
42 site.
- 43 (7) Make payments from the Fund to reimburse the costs
44 of assessment and remediation. ~~Any payments made~~

1 ~~by a private contractor engaged by the Commission~~
2 ~~shall be authorized by the Commission prior to~~
3 ~~disbursement."~~

4 Section 7. G.S. 143-215.104F, as amended by Sections 3
5 and 4 of this act, reads as rewritten:

6 "**§ 143-215.104F.** (Repealed effective January 1, 2012)
7 **Requirements for certification, assessment agreements, and**
8 **remediation agreements.**

9 (a) Any person petitioning for certification of a facility
10 or abandoned site pursuant to G.S. 143-215.104G, for a
11 dry-cleaning solvent assessment agreement pursuant to G.S.
12 143-215.104H, or for a dry-cleaning solvent remediation agreement
13 pursuant to G.S. 143-215.104I, shall meet the requirements set
14 out in this section and any other applicable requirements of this
15 Part.

16 (b) Requirements for Potentially Responsible Persons
17 Generally. -- Every petitioner shall provide the Commission with:

18 (1) Information necessary for the Commission to
19 determine the priority ranking of Any information
20 that the petitioner possesses relating to the
21 contamination at the facility or abandoned site
22 described in the petition.

23 (2) Information necessary to demonstrate the person's
24 ability to incur the response costs specified in
25 subsection (f) of this section.

26 (4) Information necessary to demonstrate that the
27 petitioner, and any parent, subsidiary, or other
28 affiliate of the petitioner has substantially
29 complied with:

30 a. The terms of any dry-cleaning solvent
31 assessment agreement, dry-cleaning solvent
32 remediation agreement, brownfields agreement,
33 or other similar agreement to which the
34 petitioner or any parent, subsidiary, or other
35 affiliate of the petitioner has been a party.

36 b. The requirements applicable to any remediation
37 in which the petitioner has previously
38 engaged.

39 c. Federal and State laws, regulations, and rules
40 for the protection of the environment.

41 (5) Evidence demonstrating that a release of
42 dry-cleaning solvent has occurred at the facility
43 or abandoned site and that the release has resulted
44 in dry-cleaning solvent contamination.

1 (c) Requirement for Property Owners. -- In addition to the
2 information required by subsection (b) of this section, a
3 petitioner who is the owner of the property on which the
4 dry-cleaning solvent contamination identified in the petition is
5 located shall provide the Commission a written agreement
6 authorizing the Commission or its agent to have access to the
7 property for purposes of conducting assessment or remediation
8 activities or determining whether assessment or remediation
9 activities are being conducted in compliance with this Part and
10 any assessment agreement or remediation agreement.

11 (cl) Costs incurred by the petitioner for activities to
12 obtain certification of a facility or site shall not be
13 reimbursable from the Fund.

14 (d) The Commission shall reject any petition made pursuant
15 to this Part in any of the following circumstances:

16 (1) The petitioner is an owner or operator of the
17 facility described in the petition and the facility
18 was not being operated in compliance with minimum
19 management practices adopted by the Commission
20 pursuant to G.S. 143-215.104D(b)(2) at the time the
21 contamination was discovered.

22 (2) The petitioner is an owner or operator of the
23 facility described in the petition and the
24 petitioner owed delinquent taxes under Article 5D
25 of Chapter 105 of the General Statutes at the time
26 the dry-cleaning solvent contamination was
27 discovered.

28 (e) The Commission may reject any petition made pursuant to
29 this Part in any of the following circumstances:

30 (1) The petitioner fails to provide the information
31 required by subsection (b) of this section.

32 (2) The petitioner falsified any information in its
33 petition that was material to the determination of
34 the priority ranking, the nature, scope and extent
35 of contamination to be assessed or remediated, or
36 the appropriate means to contain and remediate the
37 contaminants.

38 (f) Financial Responsibility Requirements. -- Each
39 potentially responsible person who petitions the Commission to
40 ~~enter into a dry-cleaning solvent assessment agreement or~~
41 ~~dry-cleaning solvent remediation agreement~~ certify a facility or
42 abandoned site shall accept written responsibility in the amount
43 specified in this section for the assessment or remediation of
44 the dry-cleaning solvent contamination identified in the

1 petition. If two or more potentially responsible persons petition
2 the Commission jointly, the requirements below shall be the
3 aggregate requirements for the financial responsibility of all
4 potentially responsible persons who are party to the petition.
5 Unless an alternative arrangement is agreed to by co-petitioners,
6 the financial responsibility requirements of this section shall
7 be apportioned equally among the co-petitioners.

8 Facility or Abandoned Site Where Release Occurred	9 Costs
10 Dry-cleaning facilities owned by persons who employ fewer 11 than five full-time employees, or the equivalent, in 12 activities related to dry-cleaning operations during 13 the preceding calendar year	\$10,000
14 15 Dry-cleaning facilities owned by persons who employ at 16 least five but fewer than 10 full-time employees, or the 17 equivalent, in activities related to dry-cleaning 18 operations during the preceding calendar year	\$15,000
19 20 Dry-cleaning facilities owned by persons who employ 21 10 or more full-time employees, or the equivalent, in 22 activities related to dry-cleaning operations during 23 the preceding calendar year	\$20,000
24 25 Wholesale distribution facilities	\$30,000
26 27 Abandoned dry-cleaning facility sites	\$50,000."

28 Section 8. G.S. 143-215.104G reads as rewritten:
29 "§ 143-215.104G. (Effective January 1, 1999; repealed effective
30 January 1, 2012) Certification of facilities and abandoned sites.

31 (a) A potentially responsible party may petition the
32 Commission to certify a facility or abandoned site where a
33 release of dry-cleaning solvent ~~is believed to have~~ has occurred.
34 The Commission shall certify the facility or abandoned site if
35 the petitioner meets the applicable requirements of G.S.
36 143-215.104F. Upon its decision to certify a facility or
37 abandoned site, the Commission shall inform the petitioner of its
38 decision and of the initial priority ranking of the facility or
39 site.

40 ~~(b) The Commission may change the initial priority rankings of~~
41 ~~any facility or abandoned site as additional facilities or~~
42 ~~abandoned sites are certified if the Commission, in its sole~~
43 ~~discretion, determines that additional facilities or sites pose a~~
44 ~~higher degree of harm or risk to public health and the~~

1 ~~environment. However, the Commission shall not change the~~
2 ~~priority ranking of a facility or an abandoned site that is set~~
3 ~~in a dry-cleaning solvent remediation agreement.~~

4 (c) A potentially responsible party who petitions for
5 certification of a facility or abandoned site shall provide the
6 Commission with either of the following:

7 (1) A ~~proposed dry-cleaning solvent assessment~~
8 ~~agreement or dry-cleaning solvent remediation~~
9 ~~agreement or an indication~~ written statement of the
10 petitioner's intent to enter into an assessment
11 agreement or remediation agreement.

12 (2) A written statement of the petitioner's intent to
13 conduct assessment and remediation activities
14 pursuant to subsection (d) of this section.

15 (d) A person who has access to property that is contaminated
16 by dry-cleaning solvent and who has successfully petitioned for
17 certification of the facility or abandoned site from which the
18 contamination is believed to have resulted may undertake
19 assessment or remediation of dry-cleaning solvent contamination
20 located on the property consistent with the standards established
21 by the Commission pursuant to G.S. 143-215.104D(b)(3) without
22 first entering into a dry-cleaning solvent assessment agreement
23 or a dry-cleaning solvent remediation agreement. No assessment or
24 remediation activities undertaken pursuant to this subsection
25 shall rely on standards that require the creation of land-use
26 restrictions. A person who undertakes assessment or remediation
27 activities pursuant to this subsection shall provide the
28 Commission prior written notice of the activity. Costs associated
29 with assessment or remediation activities undertaken pursuant to
30 this subsection shall not be eligible for reimbursement from the
31 Fund.

32 (e) The rejection of any petition filed pursuant to this
33 section shall not affect the rights of any other petitioner,
34 other than any parent, subsidiary, or other affiliate of the
35 petitioner, under this Part. The rejection of a petition or the
36 decertification of a facility or abandoned site may be the basis
37 for rejection of a petition by any parent, subsidiary, or other
38 affiliate of the petitioner for the facility or abandoned site."

39 Section 9. G.S. 143-215.104H reads as rewritten:

40 "§ 143-215.104H. (Effective January 1, 1999; repealed effective
41 January 1, 2012) Dry-Cleaning Solvent Assessment Agreements.

42 (a) Assessment Agreements. -- One or more potentially
43 responsible parties may petition the Commission to enter into a
44 dry-cleaning solvent assessment agreement regarding a facility or

1 abandoned site that has been certified pursuant to G.S.
2 143-215.104G. The Commission may, in its discretion, enter into
3 an assessment agreement with any potentially responsible party
4 who satisfies the requirements of this section and the applicable
5 requirements of G.S. 143-215.104F. If more than one potentially
6 responsible party petitions the Commission, the Commission may
7 enter into a single assessment agreement with one or more of the
8 petitioners. The Commission shall not unreasonably refuse to
9 enter into an assessment agreement pursuant to this section.
10 ~~Petitioners shall~~ The Commission may require the petitioners to
11 provide the Commission with any information necessary to
12 demonstrate that the: ~~demonstrate:~~

- 13 (1) ~~Priority~~ The priority ranking assigned to the
14 facility or site is consistent with the rules
15 adopted by the Commission or the ~~adjusted priority~~
16 ~~ranking that the petitioner agrees to accept is~~
17 ~~consistent with the rules adopted by the~~
18 Commission.
- 19 (2) ~~Projected~~ The projected schedule for funding of
20 assessment activities, ~~including reimbursements~~
21 ~~from the Fund activities~~ is adequate.
- 22 (3) ~~Assessment~~ The assessment activities to be
23 undertaken with respect to the dry-cleaning solvent
24 contamination and any other contamination at the
25 contamination site are adequate.
- 26 (4) ~~Person~~ The person who will be responsible for
27 implementation of the activities is capable and
28 qualified to conduct the assessment.
- 29 (4a) The amount of funds already expended by the
30 petitioner for assessment or remediation of
31 dry-cleaning solvent contamination at the facility
32 or site.
- 33 (5) ~~Petitioner~~ The petitioner has and will continue to
34 have available the financial resources necessary to
35 pay the costs of assessment activities and the
36 share of response costs imposed on the petitioner
37 by G.S. 143-215.104F.
- 38 (6) ~~Permits~~ The permits or other authorizations
39 required to conduct the assessment activities and
40 to lawfully dispose of any hazardous substances or
41 wastes generated by the assessment activities have
42 been or can be obtained.
- 43 (7) ~~Assessment~~ The assessment activities will not
44 increase the existing level of public exposure to

- 1 health or environmental hazards at the
2 contamination site.
- 3 (8) ~~Costs~~ The costs to be incurred in connection with
4 the assessment activities contemplated by the
5 assessment agreement are reasonable and necessary.
- 6 (9) ~~Petitioner~~ The petitioner has obtained the consent
7 of other property owners to enter into their
8 property for the purpose of conducting assessment
9 activities specified in the assessment agreement.
- 10 (b) The terms and conditions of an assessment agreement
11 regarding dry-cleaning solvent contamination shall be guided by
12 and consistent with the rules adopted by the Commission pursuant
13 to G.S. 143-215.104D and the reimbursement authorities and
14 limitations set out in this Part. An assessment agreement shall,
15 subject to the availability of monies from the Fund:
- 16 ~~(1) Specify the date on which remediation will begin.~~
- 17 (1a) Require that the petitioner shall be liable to the
18 Fund for an amount equal to the difference, if any,
19 between the applicable amount of financial
20 responsibility established by G.S. 143-215.104F and
21 the amount reasonably paid by the petitioner for
22 assessment or remediation activities of the type
23 specified in G.S. 143-215.104N(a)(1) through (7)
24 and otherwise consistent with the requirements of
25 this Part.
- 26 (2) Provide for the prompt reimbursement of response
27 costs incurred in assessment activities that are
28 found by the Commission to be consistent with the
29 assessment agreement and this Part.
- 30 (c) The Commission may refuse to enter into a dry-cleaning
31 solvent assessment agreement with any petitioner if:
- 32 (1) The petitioner will not accept financial
33 responsibility for the share of the response costs
34 required by G.S. 143-215.104F.
- 35 (2) The petitioner will not accept responsibility for
36 conducting, supervising, or otherwise undertaking
37 assessment activities required by the Commission.
- 38 (3) The petitioner fails to provide any information
39 required by subsection (a) of this section.
- 40 (d) The refusal of the Commission to enter into a dry-cleaning
41 solvent assessment agreement with any petitioner shall not affect
42 the rights of any other petitioner under this Part, except that
43 the refusal may be the basis for rejection of a petition by any

1 parent, subsidiary or other affiliate of the petitioner for the
2 facility or abandoned site.

3 (e) If the Commission determines from an assessment prepared
4 pursuant to this Part that the degree of risk to public health or
5 the environment resulting from dry-cleaning solvent contamination
6 otherwise subject to assessment or remediation under this Part
7 and Article 9 of Chapter 130A is acceptable in light of the
8 criteria established pursuant to G.S. 143-215.104D(b)(3) and
9 Article 9 of Chapter 130A, the Commission shall issue a written
10 statement of its determination and notify the owner or operator
11 of the facility or abandoned site responsible for the
12 contamination that no cleanup, no further cleanup, or no further
13 action is required in connection with the contamination.

14 (f) If the Commission determines that no remediation or
15 further action is required in connection with dry-cleaning
16 solvent contamination otherwise subject to assessment or
17 remediation pursuant to this Part and Article 9 of Chapter 130A,
18 the Commission shall not pay or reimburse any response costs
19 otherwise payable or reimbursable under this Part from the Fund
20 other than costs reasonable and necessary to conduct the risk
21 assessment pursuant to this section and in compliance with a
22 dry-cleaning solvent assessment agreement."

23 Section 10. G.S. 143-215.104I(a) reads as rewritten:

24 "(a) Upon the completion of assessment activities required by
25 a dry-cleaning solvent assessment agreement, one or more
26 potentially responsible parties may petition the Commission to
27 enter into a dry-cleaning solvent remediation agreement for any
28 contamination requiring remediation. The Commission may, in its
29 discretion, enter into a remediation agreement with any
30 petitioner who satisfies the requirements of this section and the
31 applicable requirements of G.S. 143-215.104F. If more than one
32 potentially responsible party petitions the Commission, the
33 Commission may enter into a single remediation agreement with one
34 or more of the petitioners. The Commission shall not unreasonably
35 refuse to enter into a remediation agreement pursuant to this
36 section. The Commission may, in its discretion, enter into a
37 remediation agreement that includes the assessment described in
38 G.S. 143-215.104H. Petitioners shall provide the Commission with
39 any information necessary to demonstrate that:

40 ~~(1) The petitioner, and any parent, subsidiary, or~~
41 ~~other affiliate of the petitioner has substantially~~
42 ~~complied with:~~

43 ~~a. The terms of any dry-cleaning solvent~~
44 ~~assessment agreement, dry-cleaning solvent~~

- 1 ~~remediation agreement, brownfields agreement,~~
2 ~~or other similar agreement to which the~~
3 ~~petitioner or any parent, subsidiary, or other~~
4 ~~affiliate of the petitioner has been a party.~~
5 b. ~~The requirements applicable to any remediation~~
6 ~~in which the petitioner has previously~~
7 ~~engaged.~~
8 c. ~~Federal and State laws, regulations, and rules~~
9 ~~for the protection of the environment.~~
- 10 (2) As a result of the remediation agreement, the
11 contamination site will be suitable for the uses
12 specified in the remediation agreement while fully
13 protecting public health and the environment from
14 dry-cleaning solvent contamination and any other
15 contaminants included in the remediation agreement.
- 16 (3) There is a public benefit commensurate with the
17 liability protection provided under this Part.
- 18 (4) The petitioner has or can obtain the financial,
19 managerial, and technical means to fully implement
20 the remediation agreement and assure the safe use
21 of the contamination site.
- 22 (5) The petitioner has complied with or will comply
23 with all applicable procedural requirements.
- 24 (6) The remediation agreement will not cause the
25 Department to violate the terms and conditions
26 under which the Department operates and administers
27 remedial programs, including the programs
28 established or operated pursuant to Article 9 of
29 Chapter 130A of the General Statutes, by delegation
30 or similar authorization from the United States or
31 its departments or agencies, including the United
32 States Environmental Protection Agency.
- 33 (7) The priority ranking assigned to the facility or
34 site is consistent with the rules adopted by the
35 Commission or the ~~adjusted~~ priority ranking that
36 the petitioner agrees to accept is consistent with
37 the rules adopted by the Commission.
- 38 (8) The projected schedule for funding of remediation
39 ~~activities, including reimbursements from the Fund-~~
40 ~~activities.~~
- 41 (9) The petitioner will continue to have available the
42 financial resources necessary to satisfy the share
43 of response costs imposed on the petitioner by G.S.
44 143-215.104F.

1 (10) The expenditures eligible for reimbursement from
2 the Fund and to be incurred in connection with the
3 remediation agreement are reasonable and necessary.

4 (11) The consent of other property owners to enter into
5 their property for purposes of conducting
6 remediation activities specified in the remediation
7 agreement."

8 Section 11. G.S. 143-215.104I(c)(6) reads as rewritten:
9 "(c) A dry-cleaning solvent remediation agreement shall
10 contain a description of the contamination site that would be
11 sufficient as a description of the property in an instrument of
12 conveyance and, as applicable, a statement of:

13 . . .

14 (6) The ~~final~~ priority ranking of the facility or
15 abandoned site."

16 Section 12. G.S. 143-215.104N(a) reads as rewritten:

17 "(a) Reimbursement. -- To the extent monies are available in
18 the Fund for reimbursement of response costs, the Commission
19 shall reimburse any ~~person~~ person, including a private
20 contractor, responsible for implementing reasonable and necessary
21 assessment and remediation activities at a contamination site
22 associated with a certified facility or a certified abandoned
23 site pursuant to a dry-cleaning solvent assessment agreement or
24 dry-cleaning solvent remediation agreement for the following
25 assessment and remediation response ~~costs~~: costs, for which
26 appropriate documentation is submitted:

27 (1) Costs of assessment with respect to dry-cleaning
28 solvent contamination.

29 (2) Costs of treatment or replacement of potable water
30 supplies affected by the contamination.

31 (3) Costs of remediation of affected soil, groundwater,
32 surface waters, bedrock or other rock formations,
33 or buildings.

34 (4) Monitoring of the contamination.

35 (5) Inspection and supervision of activities described
36 in this subsection.

37 (6) Reasonable costs of restoring property as nearly as
38 practicable to the conditions that existed prior to
39 activities associated with assessment and
40 remediation conducted pursuant to this Part.

41 (7) Other activities reasonably required to protect
42 public health and the environment."

43 Section 13. G.S. 143-215.104I(g) reads as rewritten:

1 "(g) The terms and conditions of a dry-cleaning solvent
2 remediation agreement concerned with dry-cleaning solvent
3 contamination shall be guided by and consistent with the rules
4 adopted by the Commission pursuant to G.S. 143-215.104D and the
5 reimbursement authorities and limitations set out in this Part. A
6 remediation agreement shall provide, subject to availability of
7 monies in the Fund, for prompt reimbursement of response costs
8 incurred in assessment or remediation activities that are found
9 by the Commission to be consistent with the remediation agreement
10 and this Part. A remediation agreement may provide for the
11 Commission to conduct assessment and remediation activities at
12 the site."

13 Section 14. (a) G.S. 143-215.104N(b)(3) reads as
14 rewritten:

15 "(3) ~~For costs before funds available through the~~
16 ~~financial responsibility demonstrated by the owner~~
17 ~~or operator of the facility or abandoned site~~
18 ~~pursuant to G.S. 143-215.104FE and for costs at a~~
19 ~~contamination site for which funds obligated by~~
20 ~~petitioners pursuant to a dry-cleaning solvent~~
21 ~~assessment agreement or dry-cleaning solvent~~
22 ~~remediation agreement in accordance with G.S.~~
23 ~~143-214.104F(f) are exhausted, overdue."~~

24 (b) G.S. 143-215.104N(c) reads as rewritten:

25 "(c) The Commission shall not pay or reimburse any response
26 costs arising from a dry-cleaning solvent assessment agreement or
27 dry-cleaning solvent remediation agreement until the petitioners
28 who are party to the agreement have exhausted the financial
29 resources made available under paid all sums due thereunder.
30 G.S. 143-215.104E and G.S. 143-215.104F."

31 Section 15. G.S. 143-215.1040 reads as rewritten:

32 "§ 143-215.1040. (Repealed effective January 1, 2012)
33 Remediation of uncertified sites.

34 (a) In the event the owner or operator of a facility or the
35 current owner of an abandoned site cannot be identified or
36 located, unreasonably refuses to enter into either an assessment
37 agreement or remediation agreement or cannot be made to comply
38 with the provisions of an assessment agreement or remediation
39 agreement between the petitioner and the Commission, the
40 Commission may direct the Department or a private contractor
41 engaged by the Commission to use staff, equipment, or materials
42 under the control of the Department or contractor or provided by
43 other cooperating federal, State, or local agencies to develop
44 and implement a plan for abatement of an imminent hazard, or to

1 provide interim alternative sources of drinking water to third
2 parties affected by dry-cleaning solvent contamination resulting
3 from a release at the facility or abandoned site. The cost of any
4 of these actions shall be paid from the Fund. The Department or
5 private contractor shall keep a record of all expenses incurred
6 for personnel and for the use of equipment and materials and all
7 other expenses of developing and implementing the remediation
8 plan.

9 (b) The Commission shall request the Attorney General to
10 commence a civil action to secure reimbursement of costs incurred
11 under this ~~subsection~~ section.

12 (c) In the event a civil action is commenced pursuant to this
13 Part to recover monies paid from the Fund, the Commission may
14 recover, in addition to any amount due, the costs of the action,
15 including reasonable attorneys' fees and investigation expenses.
16 Any monies received or recovered as reimbursement shall be paid
17 into the Fund or other source from which the expenditures were
18 made."

19 Section 16. Section 5 of S.L. 1997-392 reads as
20 rewritten:

21 "Section 5. This act constitutes a recent act of the General
22 Assembly within the meaning of G.S. 150B-21.1. The Environmental
23 Management Commission may adopt temporary rules to implement this
24 act until ~~1 January 1999~~ 30 June 2001."

25 Section 17. Section 7 of S.L. 1997-392 reads as
26 rewritten:

27 "Section 7. (a) Any person who undertakes assessment or
28 remediation of dry-cleaning solvent contamination pursuant to ~~an~~
29 a notice of violation or enforcement action by the Department of
30 ~~Environment, Health, Environment~~ and Natural Resources during the
31 period beginning 1 October 1997 and ~~1 January 1999~~ ending 30 June
32 2001 may, on or after ~~1 January 1999~~ 30 June 2001 seek
33 reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any
34 costs exceeding fifty thousand dollars (\$50,000). The Commission
35 shall reimburse costs if it finds that the costs incurred were
36 (i) appropriately documented and reasonably necessary to assess
37 or remediate the dry-cleaning solvent contamination; (ii) for any
38 of the activities described in subdivisions (1) through (7) of
39 G.S. 143-215.104N(a); (iii) not subject to any of the limitations
40 in subdivisions (4) ~~or (5)~~ through (9) of G.S. 143-215.104N(b);
41 and (iv) not reimbursable from pollution and remediation legal
42 liability insurance; and (v) required by a notice of violation or
43 a specific order of the Department of ~~Environment, Health,~~
44 Environment and Natural Resources issued on or after 30 June

1 1996. No reimbursement may be paid pursuant to this section for
2 dry-cleaning solvent contamination that did not result from
3 operations at a dry-cleaning or wholesale distribution facility.
4 Notwithstanding any other provision of this subsection, the
5 Commission may by rule shorten the period during which costs
6 subject to reimbursement pursuant to this subsection may be
7 incurred.

8 (b) Any person who, as of ~~1 January 1999~~, 30 June 2001, is
9 undertaking assessment or remediation of dry-cleaning solvent
10 contamination shall be eligible to petition the Commission to
11 enter into a dry-cleaning solvent assessment agreement or
12 dry-cleaning solvent remediation agreement with respect to the
13 contamination. In calculating the required financial
14 contribution of parties to any agreement, the Commission shall
15 determine the reasonable cost of any necessary unreimbursed
16 assessment or remediation activity undertaken by the parties with
17 respect to the contamination site prior to ~~1 January 1999~~ 30 June
18 2001 and shall credit the amount toward any applicable financial
19 responsibility limits established in G.S. 143-215.104F.
20 Notwithstanding any other provision of this subsection, the
21 Commission may by rule establish a different cutoff date for
22 assessment and remediation activities covered by this
23 subsection."

24 Section 18. The Commission on Health Services shall
25 adopt regulations which, notwithstanding any other provision of
26 statute or rule, require that a person who generates wastes at a
27 dry-cleaning facility or wholesale distribution facility that
28 contains the solvents perchloroethylene, F-1,1,3, or 1,1,1
29 trichloroethane ensures delivery of the wastes to a facility that
30 is legally authorized to manage or recycle hazardous wastes
31 containing these solvents; provided, however, that such rules
32 shall not apply to the disposal of wastewater generated from the
33 dry-cleaning process, which shall be regulated as otherwise
34 provided by law.

35 Section 19. If any section or provision of this act is
36 declared unconstitutional or invalid by the courts, the
37 unconstitutional or invalid section or provision does not affect
38 the validity of this act as a whole or any part of this act other
39 than the part declared to be unconstitutional or invalid.

40 Section 20.(a)The Secretary of Environment and Natural
41 Resources, with the assistance of a balanced working group of
42 interested parties, shall do the following:

43 (1) Identify dry-cleaning processes and equipment
44 currently in use or under development;

- 1 (2) Identify the historical trends in the use of these
2 processes and equipment; and
3 (3) Evaluate the benefits and costs of these processes
4 and equipment and the feasibility of implementing
5 and installing alternative processes or equipment.

6 Section 20.(b) In evaluating processes and equipment,
7 the Secretary shall consider, at a minimum, the following
8 factors:

- 9 (1) The environmental and public health impacts of the
10 process or equipment;
11 (2) The ability of the process or equipment to clean a
12 wide variety of natural and synthetic fabrics
13 without damage;
14 (3) The ability of small business organizations to
15 finance, own, and operate the process or equipment;
16 and
17 (4) The effect of widespread use of the process or
18 equipment on fire safety.

19 Section 20.(c) If the Secretary finds that there are
20 significant potential obstacles to the implementation of
21 beneficial alternative dry-cleaning processes or equipment, the
22 Secretary shall recommend to the General Assembly specific
23 regulatory and nonregulatory policy measures to promote the
24 increased use of such alternative processes or equipment by the
25 State's dry-cleaning industry. The Secretary shall complete this
26 study and report the findings to the Environmental Review
27 Commission by December 1, 2000.

28 Section 20.(d) The working group established by the
29 Secretary shall consist, at a minimum, of representatives of
30 nonprofit conservation organizations, representatives of the
31 dry-cleaning industry, manufacturers of dry-cleaning processes
32 and equipment, manufacturers of dry-cleaning solvents, and
33 researchers knowledgeable about garment cleaning and the
34 dry-cleaning industry.

35 Section 21. This act constitutes a recent act of the
36 General Assembly within the meaning of G.S. 150B-21.1. The
37 Environmental Management Commission and the Commission on Health
38 Services may each adopt temporary rules to implement the
39 provisions of this act until 1 July 2001. The Secretary shall
40 make the annual report required by this section on or before 1
41 October of each year.

42 Section 22. Sections 1.1 and 1.2 of this act become
43 effective July 1, 2001. Section 1.3 of this act is effective
44 when it becomes law. Section 1.4 of this act becomes effective

1 July 1, 2001, and is repealed effective July 1, 2010. Section
2 1.5 of this act becomes effective July 1, 2001, and is repealed
3 effective July 1, 2003. Section 1.6 of this act becomes
4 effective July 1, 2003, and is repealed effective July 1, 2010.
5 Section 1.7 of this act becomes effective July 1, 2003. The
6 remainder of this act is effective when it becomes law. Sections
7 3 and 4 of this act apply retroactively to April 1, 1998.
8

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-SG/SBZ-001.08 (5.09)
16-MAY-00 EZT / 11:17:22

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Flood Hazard Prevention Act of 2000. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PREVENT INAPPROPRIATE DEVELOPMENT IN THE ONE
3 HUNDRED-YEAR FLOODPLAIN AND TO REDUCE FLOOD HAZARDS, AS
4 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
5 Whereas, the hurricanes and associated flooding
6 experienced in Eastern North Carolina in 1999 caused over six
7 billion dollars in damage; and
8 Whereas, some of the structural damage resulting from
9 the floods could have been prevented by requiring development in
10 the floodplain to be elevated above the 100-year floodplain; and
11 Whereas, harm to the environment could have been
12 minimized by prohibiting certain inappropriate uses in the
13 floodplain; Now, therefore,
14 The General Assembly of North Carolina enacts:
15 Section 1. Part 6 of Article 21 of Chapter 143 of the
16 General Statutes reads as rewritten:
17 "PART 6. Floodway Floodplain Regulation.
18 "§ 143-215.51. Preamble.
19 (a) The purpose of this Part is ~~to specify means for~~
20 ~~regulation of artificial obstructions in floodways~~ to:

- 1 (1) Minimize the extent of floods by preventing
2 obstructions which inhibit water flow and increase
3 flood height and damage.
4 (2) Prevent and minimize loss of life, injuries,
5 property damage, and other losses in flood hazard
6 areas.
7 (3) Promote the public health, safety, and welfare of
8 citizens of North Carolina in flood hazard areas.

9 (b) It is hereby declared that the channel and ~~a portion of~~
10 the adjoining 100-year floodplain of all the State's streams will
11 be designated as a floodway, in which ~~artificial obstructions may~~
12 ~~not be placed~~ flood hazard area. Structures and other artificial
13 obstructions may not be placed in the channel of a stream or in
14 the adjoining floodplain, except in accordance with the
15 provisions of this Part. The purpose of designating these areas
16 as a floodway is to help control and minimize the extent of
17 floods by preventing obstructions which inhibit water flow and
18 increase flood height and damage, and thereby to prevent and
19 minimize loss of life, injuries, property damage and other losses
20 (both public and private) in flood hazard areas, and to promote
21 the public health, safety and welfare of citizens of North
22 Carolina in flood hazard areas.

23 "§ 143-215.52. Definitions.

24 As used in this Part, ~~unless the context otherwise requires:~~
25 Part:

26 (1) 'Artificial obstruction' means any obstruction
27 which is not a natural obstruction, including any
28 which, while not a significant obstruction in
29 itself, is capable of accumulating debris and
30 thereby reducing the flood-carrying capacity of the
31 stream.

32 (1a) 'Base flood' or '100-year flood' means the flood
33 which has a one percent chance of being equalled or
34 exceeded in any given year. The term 'Base flood'
35 is used in the National Flood Insurance Program to
36 indicate the minimum level of flooding to be
37 addressed by a community in its floodplain
38 management regulations.

39 (1b) 'Base floodplain' or '100-year floodplain' means
40 that area subject to a one percent or greater
41 chance of flooding in any given year, as shown on
42 the most current floodplain maps prepared pursuant
43 to the National Flood Insurance Program or approved
44 by the Department.

- 1 (1c) 'Department' means the Department of Crime Control
2 and Public Safety.
- 3 (1d) 'Flood hazard area' means the portion of the
4 floodplain designated by a local government or by
5 the Department, pursuant to this Part, as an area
6 where development must be regulated to prevent
7 damage from flooding. The flood hazard area must
8 include and may exceed the base floodplain.
- 9 (1e) 'Floodplain' means the lowland and relatively flat
10 areas adjoining inland and coastal waters,
11 including the base floodplain.
- 12 (2) 'Floodway' means that portion of the channel and
13 floodplain of a stream designated to provide
14 passage for the 100-year flood, without increasing
15 the elevation of that flood at any point by more
16 than one foot.
- 17 (3) 'Local government' means any county or municipal
18 corporation.
- 19 (4) 'Natural obstruction' includes any rock, tree,
20 gravel, or analogous other natural matter that is
21 an obstruction and has been located within the
22 floodway by a nonhuman cause.
- 23 (5) 'Stream' means a watercourse that collects surface
24 runoff from an area of one square mile or greater.
25 This does not include flooding due to tidal or
26 storm surge on estuarine or ocean waters.

27 "§ 143-215.53. Artificial obstruction prohibited. Floodplain
28 development regulated.

29 The placement of Except as provided in G.S. 143-215.54 and G.S.
30 143-215.57, no person shall place any artificial obstruction in
31 the floodway of any stream or construct any structure in a flood
32 hazard area after the floodway flood hazard area has been
33 delineated pursuant to G.S. 143-215.56 G.S. 143-215.56. is hereby
34 prohibited, except as set forth in G.S. 143-215.54, unless a
35 permit has been obtained for such artificial obstruction from the
36 responsible local government. No damageable portion of a
37 structure located outside the floodway may be below the elevation
38 that would be attained by the 100-year flood if the stream were
39 contained within the floodway.

40 "§ 143-215.54. Floodway Flood hazard area uses.

41 (a) Local governments are empowered to A local government may
42 adopt ordinances to regulate uses in flood hazard areas and grant
43 permits for the use of the floodways flood hazard areas that are
44 consistent with the purposes requirements of this Part and for

1 ~~purposes which the State does not regulate either by a permit or~~
2 ~~a formal approval system. Part.~~

3 (b) The following uses may be made of ~~floodways~~ flood hazard
4 areas as a matter of right without a permit issued under this
5 Part:

- 6 (1) General farming, pasture, outdoor plant nurseries,
7 horticulture, forestry, wildlife sanctuary, game
8 farm, and other similar agricultural, wildlife and
9 related uses;
- 10 (2) Ground level loading areas, parking areas, rotary
11 aircraft ports and other similar ground level area
12 uses;
- 13 (3) Lawns, gardens, play areas and other similar uses;
- 14 (4) Golf courses, tennis courts, driving ranges,
15 archery ranges, picnic grounds, parks, hiking or
16 horseback riding trails, open space and other
17 similar private and public recreational uses.

18 (c) The lowest habitable floor of a structure in the 100-year
19 floodplain must be constructed at least two feet above the base
20 flood elevation.

21 (d) Salvage yards, chemical storage facilities, and other uses
22 involving potentially large quantities of hazardous materials or
23 solid waste disposal may not be located in the 100-year
24 floodplain.

25 "§ 143-215.55. Existing artificial obstructions. Acquisition of
26 existing structures.

27 ~~Artificial obstructions existing in a floodway on July 1, 1971,~~
28 ~~shall not be considered to be in violation of this Part. However,~~
29 ~~they may not be enlarged or replaced in part or in whole, without~~
30 ~~a permit, as provided by this Part in the case of a proposed~~
31 ~~artificial obstruction. Local governments are empowered to A~~
32 local government may acquire, by purchase, exchange, or
33 condemnation such existing artificial obstructions if deemed
34 necessary by the responsible local government for the purpose of
35 avoiding flood damages. an existing structure located in a flood
36 hazard area in the area regulated by the local government if the
37 local government determines that the acquisition is necessary to
38 prevent damage from flooding. The procedure in all condemnation
39 proceedings pursuant to this section shall conform as nearly as
40 possible to the procedure provided in Article 3 of Chapter 40A of
41 the General Statutes.

42 "§ 143-215.56. Delineation of floodway; flood hazard areas;
43 powers of Commission and Department; powers of local governments.

- 1 (a) For the purpose of delineating ~~the floodway~~ a flood hazard
2 area and evaluating the possibility of flood damages, ~~responsible~~
3 ~~local governments are empowered to:~~ a local government may:
- 4 (1) Request technical assistance from the competent
5 federal agencies, including the Army Corps of
6 Engineers, the Soil Conservation Service, the
7 Tennessee Valley Authority, and the U.S. Geological
8 Survey, or successor ~~agencies,~~ and agencies.
- 9 (2) Utilize the reports and data supplied by federal
10 and State agencies as the basis for the exercise by
11 local ordinance or resolution of the powers and
12 responsibilities conferred on responsible local
13 governments by this Part.
- 14 (b) The Department ~~shall be empowered to render~~ may provide
15 advice and assistance to any local government having
16 responsibilities under this Part. In exercising this function it
17 shall specifically be authorized to furnish manuals, suggested
18 standards, plans, and other technical data; to conduct training
19 programs; and to give advice and assistance with respect to
20 ~~handling of particular applications;~~ delineation of flood hazard
21 areas and the development of appropriate ordinances; but it shall
22 not be limited to such activities. The Department shall send a
23 copy of every rule adopted to implement this Part to the
24 governing body of each local government in the State.
- 25 (c) A local government may delineate any ~~floodway~~ flood hazard
26 area subject to its regulation by showing it on a map or drawing,
27 by a written description, or any combination thereof, to be
28 designated appropriately and filed permanently with the clerk of
29 superior court and with the register of deeds in the county where
30 the land lies. A local government may also delineate a flood
31 hazard area by reference to a map prepared pursuant to the
32 National Flood Insurance Program. The ~~Commission~~ Department may
33 delineate a ~~floodway,~~ flood hazard area, in the same manner and
34 subject to the same requirement, when the reach of a stream in
35 which a ~~floodway~~ flood hazard area is determined by the
36 ~~Commission~~ Department to be needed exceeds the jurisdiction of a
37 single local government. Alterations in the lines delineated
38 shall be indicated by appropriate entries upon or addition to
39 such map or description. Such entries or additions shall be made
40 by or under the direction of the clerk of superior court.
41 Photographic, typed or other copies of such map or description,
42 certified by the clerk of superior court, shall be admitted in
43 evidence in all courts and shall have the same force and effect
44 as would the original map or description. A local government or

1 the ~~Commission~~ Department may provide for the redrawing of any
2 such map. A redrawn map shall supersede for all purposes the
3 earlier map or maps which it is designated to replace upon the
4 filing and approval thereof as designated and provided above.

5 (d) If the ~~Commission~~ Department determines that the ~~floodway~~
6 flood hazard area of any stream or stream segment should be
7 delineated and the use thereof controlled as provided in this
8 Part, and the local governments within which the stream or
9 segment lies have not delineated the ~~floodway~~ flood hazard area
10 or controlled uses therein, the ~~Commission~~ Department shall
11 advise the local governments of its intent to delineate the
12 ~~floodway,~~ flood hazard area, and it shall be the responsibility
13 of the local governments to control uses therein. At least 30
14 days prior to the effective date of ~~a rule of the Commission~~
15 ~~establishing any floodway,~~ the delineation by the Department of
16 any flood hazard area, notice of the effective date and copies of
17 the rule shall be delivered to every affected local government
18 ~~along with copies of all maps and plans delineating the floodway,~~
19 government. Public notice of the rule delineation shall be given
20 at least 30 days prior to the effective date by publication of a
21 notice once a week for two successive weeks in a newspaper or
22 newspapers having general circulation in the county or counties
23 in which each affected local government lies and by posting a
24 copy of the notice at the courthouse of each such county, along
25 with a sketch map showing the stream or stream segment affected.
26 The notice shall be adequate to apprise all interested persons of
27 the nature of the rules, the effective date thereof, the stream
28 or stream segment affected, and the manner in which more detailed
29 information may be secured.

30 § 143-215.57. Procedures in issuing permits.

31 (a) ~~Responsible local governments are empowered to~~ A local
32 government may establish application forms and require such maps,
33 plans, and other information as necessary for the issuance of
34 permits in a manner consonant with the objectives of this Part.
35 For this purpose they may take into account anticipated
36 development in the foreseeable future which may be adversely
37 affected by the obstruction, as well as existing development.
38 They shall consider the effects of a proposed artificial
39 obstruction in a ~~floodway~~ stream in creating danger to life and
40 property by:

41 (1) ~~By water~~ Water which may be backed up or diverted
42 by such ~~obstruction;~~ obstruction.

1 (2) ~~By the~~ The danger that the obstruction will be
2 swept downstream to the injury of ~~others; and~~
3 others.

4 (3) ~~By the~~ The injury or damage at the site of the
5 obstruction itself.

6 ~~For this purpose they may take into account anticipated~~
7 ~~development in the foreseeable future which may be adversely~~
8 ~~affected by the obstruction, as well as existing development.~~

9 (a1) Prior to issuing a permit for a structure in a floodplain,
10 a local government shall ensure that the lowest habitable floor
11 of the structure is elevated at least two feet above the 100-year
12 floodplain.

13 (a2) A local government shall not permit the establishment of a
14 salvage operation, chemical storage facility, or other use
15 involving potentially large quantities of hazardous materials or
16 solid waste disposal within the 100-year floodplain.

17 (b) In prescribing standards and requirements for the issuance
18 of permits under this Part, and in issuing such permits,
19 responsible local governments shall proceed as in the case of an
20 ordinance for the better government of the county or
21 municipality, as the case may be. A municipality may exercise the
22 powers granted in this Part not only within its corporate
23 boundaries but also within the area of its extraterritorial
24 zoning jurisdiction. A county may exercise the powers granted in
25 this Part at any place within the county outside the zoning
26 jurisdiction of any municipalities in the county. The county may
27 regulate territory within the zoning jurisdiction of any
28 municipality whose governing body, by resolution, agrees to such
29 regulation; provided, however, that any such municipal governing
30 body may, upon one year's written notice, withdraw its approval
31 of the county regulations, and those regulations shall have no
32 further effect within the municipality's jurisdiction.

33 (c) The local governing body is hereby empowered to adopt such
34 regulations as it may deem necessary concerning the form, time,
35 and manner of submission of applications for permits under this
36 Part. Such regulations may provide for the issuance of permits
37 under this Part by the local governing body or by such agency as
38 may be designated by said body, as prescribed by the governing
39 body. Every final decision granting or denying a permit under
40 this Part shall be subject to review by the superior court of the
41 county, with the right of jury trial at the election of the party
42 seeking review. The time and manner of election of a jury trial
43 shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil
44 Procedure. Pending the final disposition of any such appeal, no

1 action shall be taken which would be unlawful in the absence of a
2 permit issued under this Part.

3 "§ 143-215.58. Violations and penalties.

4 (a) Any willful violation of this Part or of any ordinance
5 adopted (or of the provisions of any permit issued) under the
6 authority of this Part shall constitute a Class 1 misdemeanor.

7 (a1) A local government may use all of the remedies available
8 for the enforcement of zoning ordinances under Chapter 160A and
9 Chapter 153 of the General Statutes to enforce an ordinance
10 adopted pursuant to this Part.

11 (b) Failure to remove any artificial obstruction or enlargement
12 or replacement thereof, that violates this Part or any ordinance
13 adopted (or the provision of any permit issued) under the
14 authority of this Part, shall constitute a separate violation of
15 this Part for each ~~10 days~~ day that such failure continues after
16 written notice from the county or municipal governing body.

17 (c) In addition to or in lieu of other remedies, the county or
18 municipal governing body may institute any appropriate action or
19 proceeding to restrain or prevent any violation of this Part or
20 of any ordinance adopted (or of the provisions of any permit
21 issued) under the authority of this Part, or to require any
22 person, firm or corporation which has committed any such
23 violation to remove a violating obstruction or restore the
24 conditions existing before the placement of the obstruction. "§
25 143-215.59. Other approvals required.

26 (a) The granting of a permit under the provisions of this Part
27 shall in no way affect any other type of approval required by any
28 other statute or ordinance of the State or any political
29 subdivision of the State, or of the United States, but shall be
30 construed as an added requirement.

31 (b) No permit for the construction of any structure to be
32 located within a ~~floodway~~ flood hazard area shall be granted by a
33 political subdivision unless the applicant has first obtained the
34 permit required by this Part.

35 "§ 143-215.60. Liability for damages.

36 No action for damages sustained because of injury or property
37 damage caused by ~~an~~ a structure or obstruction for which a permit
38 has been granted under this Part shall be brought against the
39 State or any political subdivision of the State, or their
40 employees or agents.

41 "§ 143-215.61. Floodplain management.

42 The provisions of this Part shall not preclude the imposition
43 by responsible local governments of land use controls and other

1 regulations in the interest of floodplain management for the
2 floodplain or the floodway."

3 Section 2. Part 6 of Article 21 of Chapter 143 is
4 amended by adding a new section to read:

5 "§ 143-215.62. Failure to implement; approval of variances.

6 (a) A local government that has not adopted and implemented an
7 ordinance consistent with the requirements of this Part shall not
8 be eligible for State disaster assistance until the local
9 government adopts and implements an ordinance consistent with the
10 requirements of this Part.

11 (b) Issuance by a local government of a variance from the
12 minimum elevation requirement of a local ordinance that is
13 consistent with the requirements of this Part shall make the
14 structure's owner ineligible for State disaster assistance for
15 loss or damage from flooding to the structure permitted pursuant
16 to the variance.

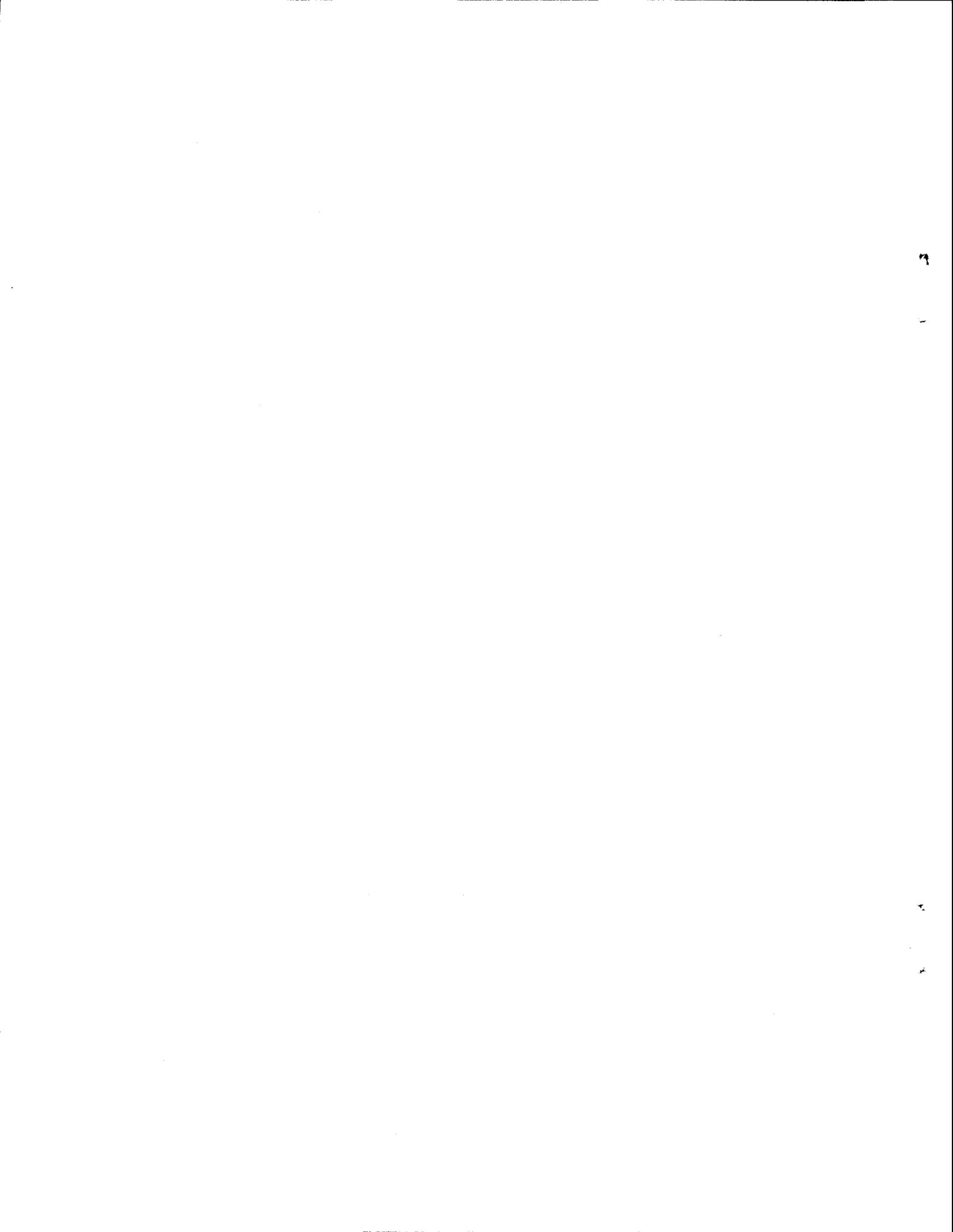
17 (c) The responsible local government shall give notice of the
18 provisions of subsection (b) of this section to any petitioner
19 for a variance from the minimum elevation requirements of a local
20 ordinance that is consistent with the requirements of this Part
21 prior to issuing a permit pursuant to the variance and shall
22 obtain the petitioner's signature on a form that waives the
23 petitioner's claim to any State disaster assistance for loss or
24 damage from flooding to the structure permitted pursuant to the
25 variance.

26 (d) A local government must demonstrate that it has adopted and
27 implemented an ordinance consistent with the requirements of this
28 Part in order to be eligible for State grants and loans for
29 infrastructure improvements, including the development or
30 expansion of a wastewater treatment system, drinking water
31 treatment system, or associated collection or distribution
32 system."

33 Section 3. A structure or use existing in the 100-year
34 floodplain prior to July 1, 2000 or for which a building permit
35 was issued prior to July 1, 2000 is not in violation of G.S.
36 143-215.54. On or after July 1, 2000, development in the base
37 floodplain must at a minimum be consistent with the standards set
38 out in G.S. 143-215.4.

39 Section 4. Notwithstanding G.S. 150B-21.1(a)(2), the
40 Department of Crime Control and Public Safety is authorized to
41 adopt temporary rules to implement this Act.

42 Section 5. Sections 1, 3, 4 and 5 are effective when
43 this Act becomes law. Section 2 is effective January 1, 2001.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

ERC00-LC/SGZ-013.01 (4.25)
12-MAY-00 EZT / 15:34:23

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Nonhazardous Dry-Cleaning Tech. Incentive. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A NEW TAX CREDIT AS AN INCENTIVE FOR INVESTING
3 IN DRY-CLEANING AND WET-CLEANING EQUIPMENT THAT DOES NOT USE
4 HAZARDOUS SUBSTANCES AS SOLVENTS, AS RECOMMENDED BY THE
5 ENVIRONMENTAL REVIEW COMMISSION.
6 The General Assembly of North Carolina enacts:
7 Section 1. Article 3B of Chapter 105 of the General
8 Statutes is amended by adding a new section to read:
9 "§ 105-129.16C. Credit for investing in dry-cleaning or wet-
10 cleaning equipment that does not use hazardous substances as
11 solvents.
12 (a) Credit. -- If a taxpayer that has purchased or leased
13 qualified dry-cleaning or wet-cleaning equipment places it in
14 service in this State for commercial purposes during the taxable
15 year, the taxpayer is allowed a credit equal to thirty-five
16 percent (35%) of the cost of the equipment. No credit is allowed
17 under this section to the extent the cost of the equipment was
18 paid with public funds. A taxpayer that claims any other credit
19 allowed under this Chapter with respect to qualified dry-cleaning
20 or wet-cleaning equipment may not take the credit allowed in this
21 section with respect to the same equipment.

1 (b) Definitions. -- The following definitions apply in this
2 section:

- 3 (1) Hazardous solvent. -- A solvent any portion of
4 which consists of a chlorine-based solvent, a
5 hydrocarbon-based solvent, a hazardous substance as
6 defined in the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980,
8 Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et.
9 seq., as amended, and the Superfund Amendments and
10 Reauthorization Act of 1986, Pub. L. 99-499, 100
11 Stat. 1613, as amended, or any substance determined
12 by the Administrator of the Environmental
13 Protection Agency or the Director of the National
14 Institute of Occupational Safety and Health to
15 possess either carcinogenic potential to humans or
16 bioaccumulative properties.
- 17 (2) Qualified dry-cleaning or wet-cleaning equipment.
18 -- Equipment that is designed primarily to dry-
19 clean or wet-clean clothing and other fabric and
20 that does not use any hazardous solvent as the
21 process solvent."

22 Section 2. This act is effective for taxable years
23 beginning on or after January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-RTZ-021.04 (5.9)
15-MAY-00 EZT / 17:17:14

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Petroleum Discharge Amends-1.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT CERTAIN REQUIREMENTS RELATED TO LAND-USE
3 RESTRICTIONS THAT APPLY GENERALLY TO RISK-BASED ENVIRONMENTAL
4 CLEANUPS DO NOT APPLY TO CLEANUPS OF PETROLEUM FROM LEAKING
5 UNDERGROUND STORAGE TANKS AND TO DIRECT THE ENVIRONMENTAL
6 REVIEW COMMISSION TO CONTINUE TO STUDY OF THE APPLICATION OF
7 LAND-USE RESTRICTIONS TO THE CLEANUP OF ENVIRONMENTAL DAMAGE
8 FROM THESE TANKS THROUGH A STAKEHOLDER NEGOTIATION PROCESS, AS
9 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
10 The General Assembly of North Carolina enacts:
11 Section 1. G.S. 143B-279.9 reads as rewritten:
12 "§ 143B-279.9. Land-use restrictions may be imposed to reduce
13 danger to public health at contaminated sites.
14 (a) In order to reduce or eliminate the danger to public
15 health or the environment posed by the presence of contamination
16 at a site, an owner, operator, or other responsible party may
17 impose restrictions on the current or future use of the real
18 property comprising any part of the site where the contamination
19 is located if the restrictions meet the requirements of this

1 section. The restrictions must be agreed to by the owner of the
2 real property, included in a remedial action plan for the site
3 that has been approved by the Secretary, and implemented as a
4 part of the remedial action program for the site. The Secretary
5 may approve restrictions included in a remedial action plan in
6 accordance with standards that the Secretary determines to be
7 applicable to the site. If Except as provided in subsection (b)
8 of this section, if the remedial action is risk-based or will not
9 require that the site meet current standards, as defined in G.S.
10 130A-310.31, the remedial action plan must include an agreement
11 by the owner, operator, or other responsible party to record
12 approved land-use restrictions that meet the requirements of this
13 section as provided in G.S. 143B-279.10. Restrictions may apply
14 to activities on, over, or under the land, including, but not
15 limited to, use of groundwater, building, filling, grading,
16 excavating, and mining. Any approved restriction shall be
17 enforced by any owner, operator, or other party responsible for
18 the contaminated site. Any land-use restriction may also be
19 enforced by the Department through the remedies provided by any
20 provision of law that is implemented or enforced by the
21 Department or by means of a civil action. The Department may
22 enforce any land-use restriction without first having exhausted
23 any available administrative remedies. A land-use restriction
24 may also be enforced by any unit of local government having
25 jurisdiction over any part of the site. A land-use restriction
26 shall not be declared unenforceable due to lack of privity of
27 estate or contract, due to lack of benefit to particular land, or
28 due to lack of any property interest in particular land. Any
29 person who owns or leases a property subject to a land-use
30 restriction under this Part shall abide by the land-use
31 restriction.

32 (b) Subsection (a) of this section shall not apply to a
33 risk-based remedial action plan for the cleanup of environmental
34 damage resulting from a discharge or release of petroleum from an
35 underground storage tank pursuant to Part 2A of Article 21A of
36 Chapter 143 of the General Statutes.

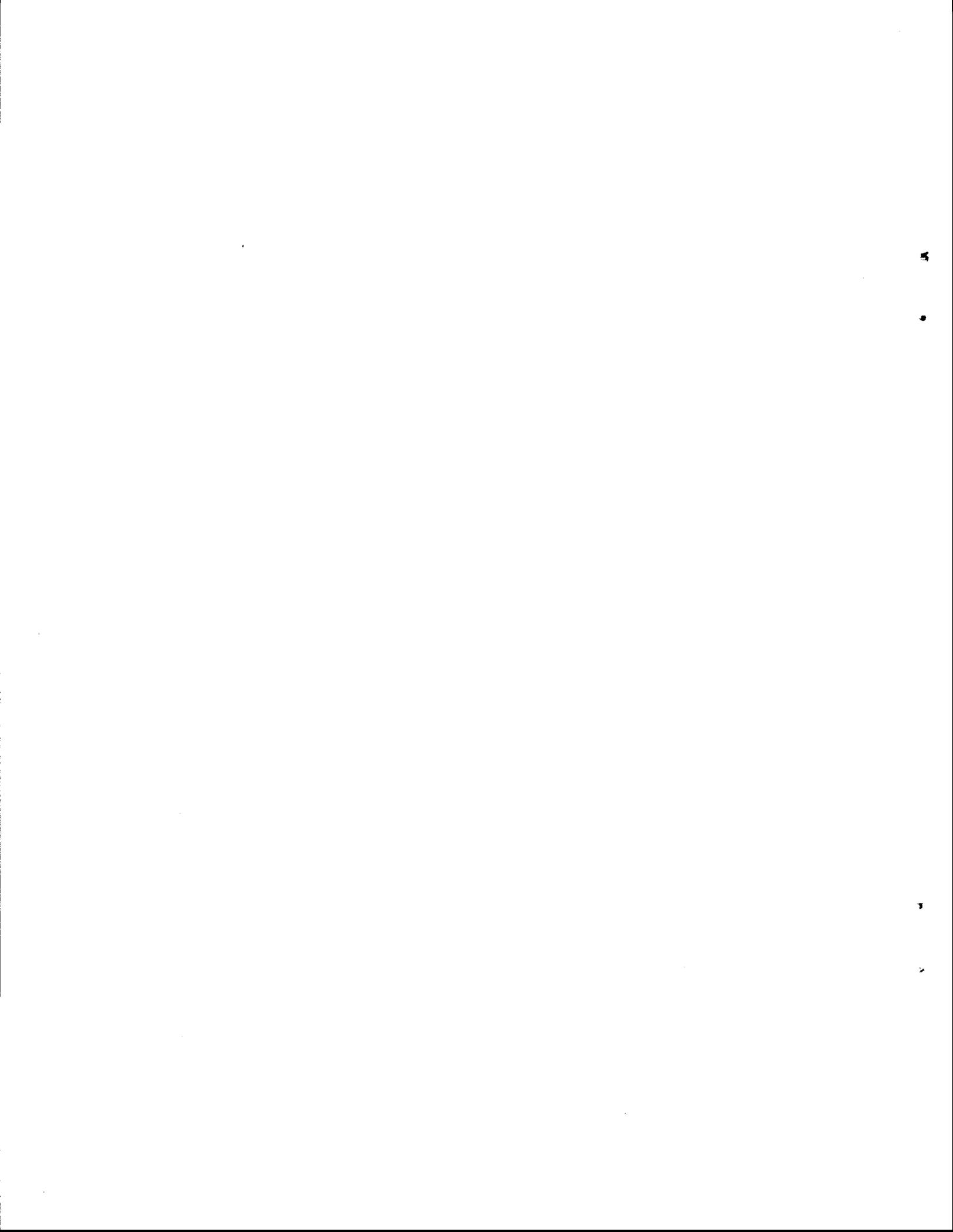
37 Section 2. G.S. 143B-279.10(f) reads as rewritten:

38 "(f) A Notice of Contaminated Site filed pursuant to this
39 section ~~may~~, shall, at the request of the owner of the land, be
40 cancelled by the Secretary after the contamination has been

1 ~~eliminated.~~ eliminated or remediated to current standards, as
2 defined in G.S. 130A-310.31. If requested in writing by the
3 owner of the land and if the Secretary concurs with the request,
4 the Secretary shall send to the register of deeds of each county
5 where the Notice is recorded a statement that the contamination
6 has been ~~eliminated~~ eliminated, or that the contamination has
7 been remediated to current standards, and request that the Notice
8 be cancelled of record. The Secretary's statement shall contain
9 the names of the owners of the land as shown in the Notice and
10 reference the plat book and page where the Notice is recorded.
11 The register of deeds shall record the Secretary's statement in
12 the deed books and index it on the grantor index in the names of
13 the owners of the land as shown in the Notice and on the grantee
14 index in the name "Secretary of Environment and Natural
15 Resources". The register of deeds shall make a marginal entry on
16 the Notice showing the date of cancellation and the book and page
17 where the Secretary's statement is recorded, and the register of
18 deeds shall sign the entry. If a marginal entry is impracticable
19 because of the method used to record maps and plats, the register
20 of deeds shall not be required to make a marginal entry."

21 Section 3. The Environmental Review Commission shall
22 continue to study the application of land-use restrictions to the
23 cleanup of environmental damage resulting from discharges and
24 releases of petroleum from underground storage tanks through a
25 stakeholder negotiation process. As a part of this study, the
26 Commission shall consider issues related to notice to current and
27 future users of real property of any restrictions on the current
28 and future use of the property, mechanisms to ensure compliance
29 with those restrictions, notice to current and future users of
30 real property of the existence of contamination in excess of
31 current standards, and issues related to recordation in the
32 register of deeds office of this information. The Commission
33 shall report its findings and recommendations, including any
34 legislative proposals, to the 2001 General Assembly.

35 Section 4. Sections 1 and 2 of this act are effective
36 retroactively to 1 October 1999. Sections 3 and 4 of this act
37 are effective when this act becomes law. Section 1 of this act
38 expires 1 September 2001.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-RTZ-024.03 (5.9)
15-MAY-00 EZT / 16:21:03

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Petroleum Discharges/De Minimis Reports. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE DE MINIMIS REPORTING EXCEPTION TO ALL
3 DISCHARGES OF PETROLEUM, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 143-215.85 reads as rewritten:
7 "§ 143-215.85. Required notice.
8 (a) Every Except as provided in G.S. 143-215.94E(a1) and
9 subsection (b) of this section, every person owning or having
10 control over oil or other substances discharged in any
11 circumstances other than pursuant to a rule adopted by the
12 Commission, a regulation of the U. S. Environmental Protection
13 Agency, or a permit required by G.S. 143-215.1 or the Federal
14 Water Pollution Control Act, upon notice that such discharge has
15 occurred, shall immediately notify the Department, or any of its
16 agents or employees, of the nature, location and time of the
17 discharge and of the measures which are being taken or are
18 proposed to be taken to contain and remove the discharge. The
19 agent or employee of the Department receiving the notification

1 shall immediately notify the Secretary or such member or members
2 of the permanent staff of the Department as the Secretary may
3 designate. If the discharged substance of which the Department
4 is notified is a pesticide regulated by the North Carolina
5 Pesticide Board, the Department shall immediately inform the
6 Chairman of the Pesticide Board. Removal operations under this
7 Article of substances identified as pesticides defined in G.S.
8 143-460 shall be coordinated in accordance with the Pesticide
9 Emergency Plan adopted by the North Carolina Pesticide Board;
10 provided that, in instances where entry of such hazardous
11 substances into waters of the State is imminent, the Department
12 may take such actions as are necessary to physically contain or
13 divert such substance so as to prevent entry into the surface
14 waters.

15 (b) As used in this subsection, 'petroleum' has the same
16 meaning as in G.S. 143-215.94A. A person who owns or has control
17 over petroleum that is discharged to the environment shall
18 immediately take measures to collect and remove the discharge,
19 report the discharge to the Department within 24 hours of the
20 discharge, and begin to restore the area affected by the
21 discharge in accordance with the requirements of this Article if
22 the volume of the petroleum that is discharged is 25 gallons or
23 more or if the petroleum causes a sheen on nearby surface water
24 or if the petroleum is discharged at a distance of 100 feet or
25 less from any surface water body. If the volume of petroleum
26 that is discharged is less than 25 gallons, the petroleum does
27 not cause a sheen on nearby surface water, and the petroleum is
28 discharged at a distance of more than 100 feet from all surface
29 water bodies, the person who owns or has control over the
30 petroleum shall immediately take measures to collect and remove
31 the discharge. If a discharge of less than 25 gallons of
32 petroleum cannot be cleaned up within 24 hours of the discharge
33 or if the discharge causes a sheen on nearby surface water, the
34 person who owns or has control over the petroleum shall
35 immediately notify the Department."

36 Section 2. This act is effective when it becomes law
37 and applies to any discharge of petroleum to the environment that
38 occurs on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

BILL DRAFT ERC00-SGZ-007.04 (4.25)
15-MAY-00 EZT / 14:34:09

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Stormwater Utility Fees.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT STORMWATER UTILITY FEES MAY BE USED TO
3 FUND ALL COSTS OF STORMWATER MANAGEMENT PROGRAMS, AS
4 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 153A-274 reads as rewritten:
7 "§ 153A-274. Public enterprise defined.
8 As used in this Article, 'public enterprise' includes:
9 (1) Water supply and distribution ~~systems,~~ systems.
10 (2) Wastewater collection, treatment, and disposal
11 systems of all types, including septic tank systems
12 or other on-site collection or disposal facilities
13 or ~~systems,~~ systems.
14 (3) Solid waste collection and disposal systems and
15 ~~facilities,~~ facilities.
16 (4) ~~Airports,~~ Airports.
17 (5) Off-street ~~parking facilities,~~ facilities.
18 (6) Public transportation ~~systems,~~ systems.
19 (7) Structural Stormwater management programs designed
20 to protect water quality by controlling the level
21 of pollutants in, and the quantity and flow of,

1 stormwater and structural and natural stormwater
2 and drainage systems of all types."

3 Section 2. G.S. 153A-277 reads as rewritten:

4 "§ 153A-277. Authority to fix and enforce rates.

5 (a) A county may establish and revise from time to time
6 schedules of rents, rates, fees, charges, and penalties for the
7 use of or the services furnished by a public enterprise.
8 Schedules of rents, rates, fees, charges, and penalties may vary
9 for the same class of service in different areas of the county
10 and may vary according to classes of service, and different
11 schedules may be adopted for services provided outside of the
12 county. A county may include a fee relating to subsurface
13 discharge wastewater management systems and services on the
14 property tax bill for the real property where the system for
15 which the fee is imposed is located.

16 (a1) (1) Before it establishes or revises a schedule of
17 rates, fees, charges, or penalties for stormwater
18 management programs and structural and natural
19 stormwater and drainage systems under this section,
20 the board of commissioners shall hold a public
21 hearing on the matter. A notice of the hearing
22 shall be given at least once in a newspaper having
23 general circulation in the area, not less than
24 seven days before the public hearing. The hearing
25 may be held concurrently with the public hearing on
26 the proposed budget ordinance.

27 (2) The fees established under this subsection must be
28 made applicable throughout the area of the county
29 outside municipalities. Schedules of rates, fees,
30 charges, and penalties for providing stormwater
31 management programs and structural and natural
32 stormwater and drainage system service may vary
33 according to whether the property served is
34 residential, commercial, or industrial property,
35 the property's use, the size of the property, the
36 area of impervious surfaces on the property, the
37 quantity and quality of the runoff from the
38 property, the characteristics of the watershed into
39 which stormwater from the property drains, and
40 other factors that affect the stormwater drainage
41 system. Rates, fees, and charges imposed under this
42 subsection may not exceed the county's cost of
43 providing a stormwater management program and a
44 structural and natural stormwater and drainage

1 system. The county's cost of providing a
2 stormwater management program and a structural and
3 natural stormwater and drainage system includes any
4 costs necessary to assure that all aspects of
5 stormwater quality and quantity are managed in
6 accordance with federal and State laws,
7 regulations, and rules.

8 (3) No stormwater utility fee may be levied under this
9 subsection whenever two or more units of local
10 government operate separate stormwater management
11 programs or separate structural and natural
12 stormwater and drainage system services in the same
13 area within a county. However, two or more units of
14 local government may allocate among themselves the
15 functions, duties, powers, and responsibilities for
16 jointly operating a ~~single~~ stormwater management
17 programs and structural and natural stormwater and
18 drainage system service in the same area within a
19 county, provided that only one unit may levy a fee
20 for the service within the joint service area. For
21 purposes of this subsection, a unit of local
22 government shall include a regional authority
23 providing stormwater management programs and
24 structural and natural stormwater and drainage
25 system services.

26 (b) A county may collect delinquent accounts by any remedy
27 provided by law for collecting and enforcing private debts, and
28 may specify by ordinance the order in which partial payments are
29 to be applied among the various enterprise services covered by a
30 bill for the services. A county may also discontinue service to
31 a customer whose account remains delinquent for more than 10
32 days. If a delinquent customer is not the owner of the premises
33 to which the services are delivered, the payment of the
34 delinquent account may not be required before providing services
35 at the request of a new and different tenant or occupant of the
36 premises. If water or sewer services are discontinued for
37 delinquency, it is unlawful for a person other than a duly
38 authorized agent or employee of the county to reconnect the
39 premises to the water or sewer system.

40 (c) Rents, rates, fees, charges, and penalties for
41 enterprisory services are in no case a lien upon the property or
42 premises served and, except as provided in subsection (d) of this
43 section, are legal obligations of the person contracting for

1 them, provided that no contract shall be necessary in the case of
2 structural and natural stormwater and drainage systems.

3 (d) Rents, rates, fees, charges, and penalties for
4 enterprisory services are legal obligations of the owner of the
5 property or premises served when:

- 6 (1) The property or premises is leased or rented to
7 more than one tenant and services rendered to more
8 than one tenant are measured by the same meter; or
9 (2) Charges made for use of a sewerage system are
10 billed separately from charges made for the use of
11 a water distribution system."

12 Section 3. G.S. 160A-311 reads as rewritten:

13 "§ 160A-311. Public enterprise defined.

14 As used in this Article, the term 'public enterprise' includes:

- 15 (1) Electric power generation, transmission, and
16 distribution ~~systems;~~ systems.
17 (2) Water supply and distribution ~~systems;~~ systems.
18 (3) Wastewater collection, treatment, and disposal
19 systems of all types, including septic tank systems
20 or other on-site collection or disposal facilities
21 or ~~systems;~~ systems.
22 (4) Gas production, storage, transmission, and
23 distribution systems, where systems shall also
24 include the purchase ~~and/or~~ or lease of natural gas
25 fields and natural gas reserves, the purchase of
26 natural gas supplies, and the surveying, drilling
27 and any other activities related to the exploration
28 for natural gas, whether within the State or
29 ~~without;~~ without.
30 (5) Public transportation ~~systems;~~ systems.
31 (6) Solid waste collection and disposal systems and
32 ~~facilities;~~ facilities.
33 (7) Cable television ~~systems;~~ systems.
34 (8) Off-street parking facilities and ~~systems;~~ systems.
35 (9) ~~Airports;~~ Airports.
36 (10) Structural Stormwater management programs designed
37 to protect water quality by controlling the level
38 of pollutants in, and the quantity and flow of,
39 stormwater and structural and natural stormwater
40 and drainage systems of all types."

41 Section 4. G.S. 160A-314 reads as rewritten:

42 "§ 160A-314. Authority to fix and enforce rates.

43 (a) A city may establish and revise from time to time
44 schedules of rents, rates, fees, charges, and penalties for the

1 use of or the services furnished by any public enterprise.
2 Schedules of rents, rates, fees, charges, and penalties may vary
3 according to classes of service, and different schedules may be
4 adopted for services provided outside the corporate limits of the
5 city.

6 (a1) (1) Before it establishes or revises a schedule of
7 rates, fees, charges, or penalties for stormwater
8 management programs and structural and natural
9 stormwater and drainage systems under this section,
10 the city council shall hold a public hearing on the
11 matter. A notice of the hearing shall be given at
12 least once in a newspaper having general
13 circulation in the area, not less than seven days
14 before the public hearing. The hearing may be held
15 concurrently with the public hearing on the
16 proposed budget ordinance.

17 (2) The fees established under this subsection must be
18 made applicable throughout the area of the city.
19 Schedules of rates, fees, charges, and penalties
20 for providing stormwater management programs and
21 structural and natural stormwater and drainage
22 system service may vary according to whether the
23 property served is residential, commercial, or
24 industrial property, the property's use, the size
25 of the property, the area of impervious surfaces on
26 the property, the quantity and quality of the
27 runoff from the property, the characteristics of
28 the watershed into which stormwater from the
29 property drains, and other factors that affect the
30 stormwater drainage system. Rates, fees, and
31 charges imposed under this subsection may not
32 exceed the city's cost of providing a stormwater
33 management program and a structural and natural
34 stormwater and drainage system. The city's cost of
35 providing a stormwater management program and a
36 structural and natural stormwater and drainage
37 system includes any costs necessary to assure that
38 all aspects of stormwater quality and quantity are
39 managed in accordance with federal and State laws,
40 regulations, and rules.

41 (3) No stormwater utility fee may be levied under this
42 subsection whenever two or more units of local
43 government operate separate stormwater management
44 programs or separate structural and natural

1 stormwater and drainage system services in the same
2 area within a county. However, two or more units of
3 local government may allocate among themselves the
4 functions, duties, powers, and responsibilities for
5 jointly operating a single stormwater management
6 program and structural and natural stormwater and
7 drainage system service in the same area within a
8 county, provided that only one unit may levy a fee
9 for the service within the joint service area. For
10 purposes of this subsection, a unit of local
11 government shall include a regional authority
12 providing stormwater management programs and
13 structural and natural stormwater and drainage
14 system services.

15 (a2) A fee for the use of a disposal facility provided by the
16 city may vary based on the amount, characteristics, and form of
17 recyclable materials present in solid waste brought to the
18 facility for disposal. This section does not prohibit a city from
19 providing aid to low-income persons to pay all or part of the
20 cost of solid waste management services for those persons.

21 (b) A city shall have power to collect delinquent accounts by
22 any remedy provided by law for collecting and enforcing private
23 debts, and may specify by ordinance the order in which partial
24 payments are to be applied among the various enterprise services
25 covered by a bill for the services. A city may also discontinue
26 service to any customer whose account remains delinquent for more
27 than 10 days. When service is discontinued for delinquency, it
28 shall be unlawful for any person other than a duly authorized
29 agent or employee of the city to do any act that results in a
30 resumption of services. If a delinquent customer is not the owner
31 of the premises to which the services are delivered, the payment
32 of the delinquent account may not be required before providing
33 services at the request of a new and different tenant or occupant
34 of the premises, but this restriction shall not apply when the
35 premises are occupied by two or more tenants whose services are
36 measured by the same meter.

37 (c) Except as provided in subsection (d) of this section and
38 G.S. 160A-314.1, rents, rates, fees, charges, and penalties for
39 enterprisory services shall be legal obligations of the person
40 contracting for them, and shall in no case be a lien upon the
41 property or premises served, provided that no contract shall be
42 necessary in the case of structural and natural stormwater and
43 drainage systems.

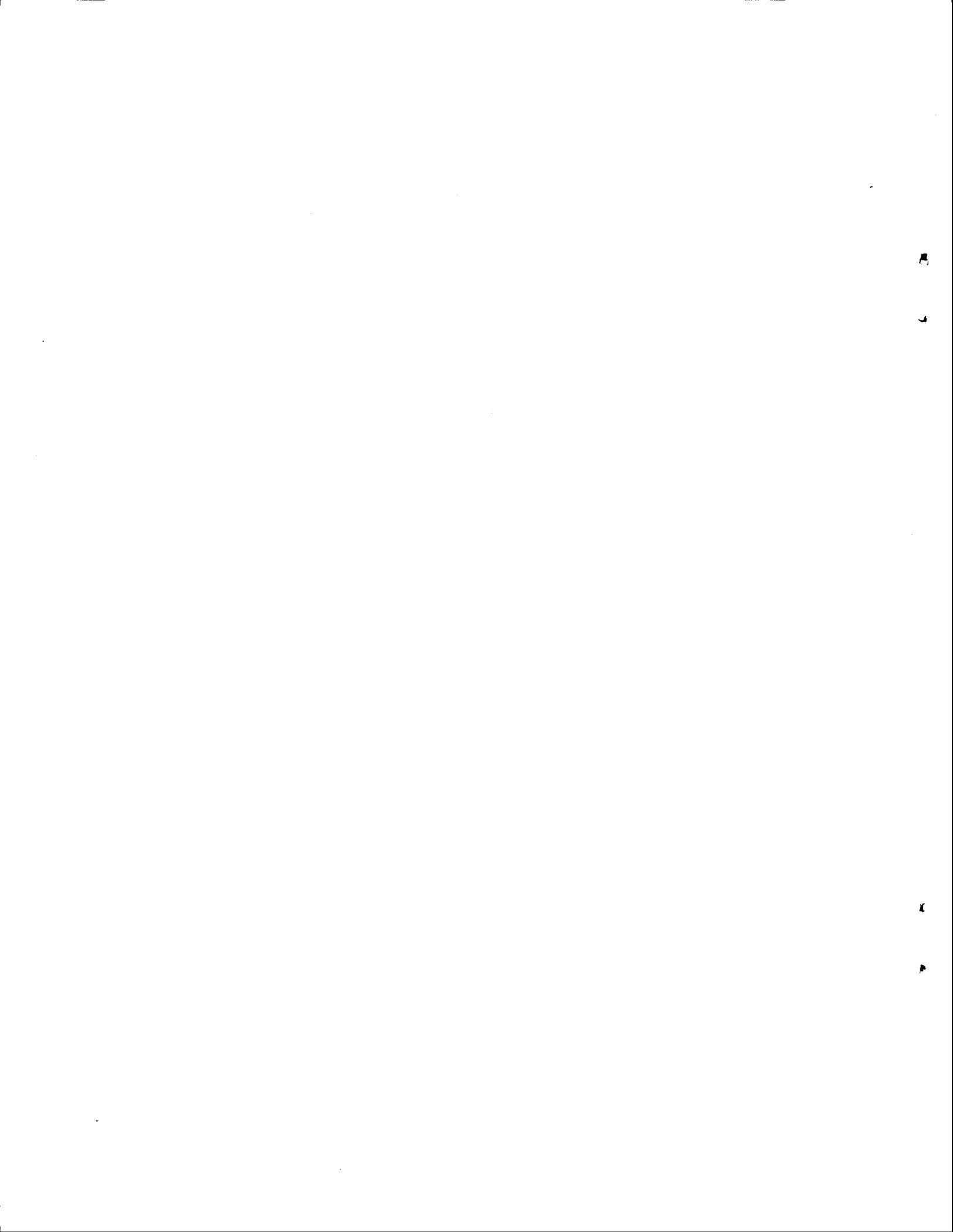
1 (d) Rents, rates, fees, charges, and penalties for
2 enterprisory services shall be legal obligations of the owner of
3 the premises served when:

4 (1) The property or premises is leased or rented to
5 more than one tenant and services rendered to more
6 than one tenant are measured by the same meter.

7 (2) Charges made for use of a sewage system are billed
8 separately from charges made for the use of a water
9 distribution system.

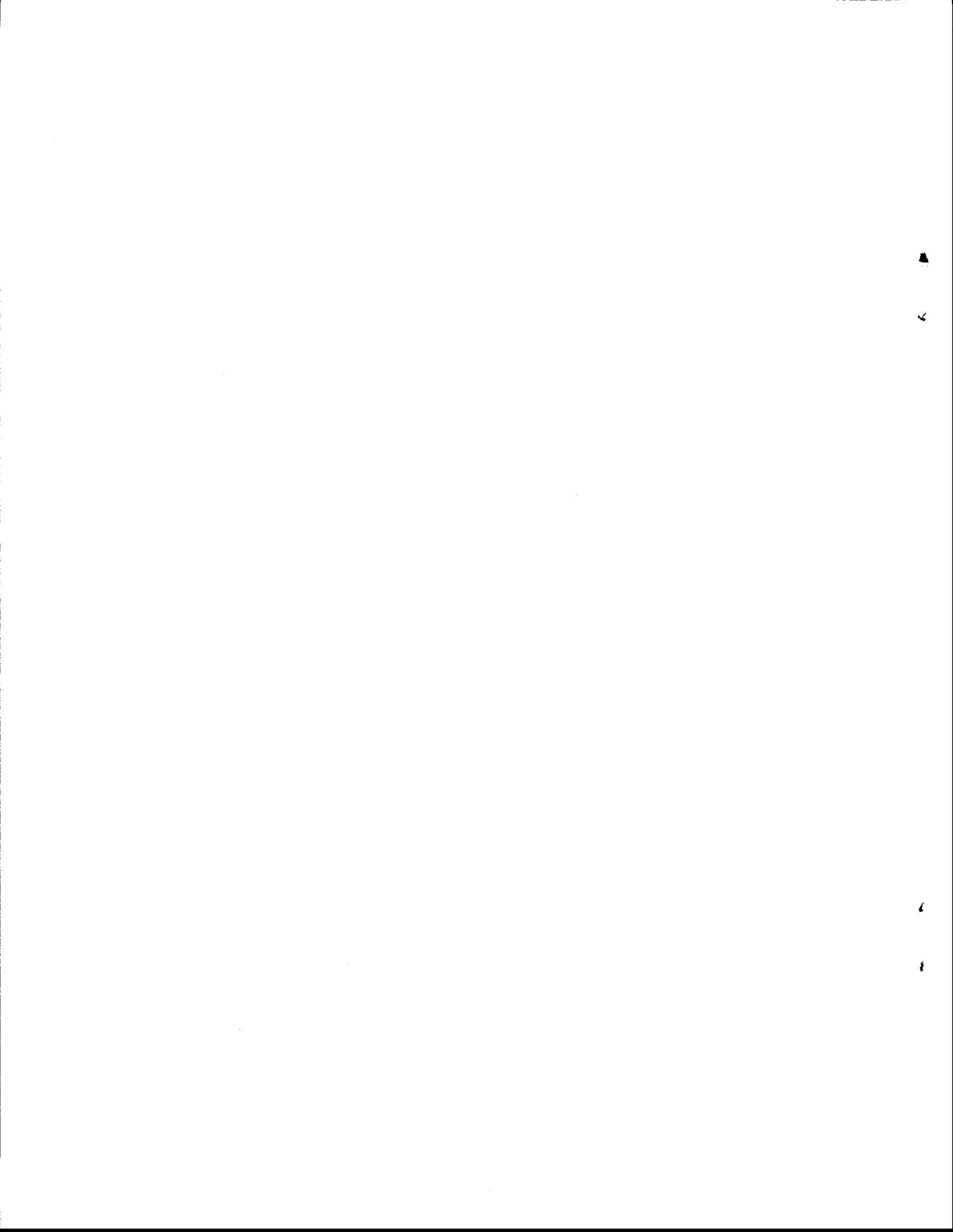
10 (e) Nothing in this section shall repeal any portion of any
11 city charter inconsistent herewith."

12 Section 5. This act is effective on and after July 15,
13 1989.



APPENDIX II:

STUDIES REFERRED TO THE
ENVIRONMENTAL REVIEW COMMISSION
BY THE
LEGISLATIVE RESEARCH COMMISSION



STUDIES REFERRED TO THE ENVIRONMENTAL REVIEW COMMISSION BY THE LEGISLATIVE RESEARCH COMMISSION

Environmental Impacts; Sources of Pollution

The Legislative Research Commission referred the study of environmental impacts and sources of pollution authorized by S.L. 1999-395, Sec. 2.1(6), to the Environmental Review Commission (ERC). The ERC has heard and discussed a number of reports on water and air pollution, as well as issues related to the cleanup and redevelopment of contaminated sites. These reports identified urban and agricultural runoff as the biggest contributors to surface water impairment, and dry cleaning solvents as a major source of soil and groundwater pollution. The reports also identified electric utilities and automobiles as the primary sources of nitrogen oxides (NO_x) in the air. NO_x combines with sunlight to form ground-level ozone, and the ERC was informed that failing to meet national air quality standards for ground-level ozone could jeopardize federal transportation funding for local highway projects.

The ERC has voted to recommend several measures addressing these issues to the 2000 Regular Session of the 1999 General Assembly. These include amendments to the Dry Cleaning Solvent Cleanup Act and a tax incentive for dry cleaners that do not use hazardous solvents, as well as tax incentives for the risk-based cleanup and redevelopment of contaminated "brownfield" sites. The ERC is also considering recommendations to modify the fee and technology required for automobile emissions inspections.

Wastewater System Construction Permits and Related Issues

The Legislative Research Commission referred the study of wastewater system construction permits and related issues that was authorized by SL 1999-395, Section 2.1, Subsection 6, to the Environmental Review Commission (ERC). The ERC heard reports from the Environmental Management Commission (EMC) and the Division of Water Quality in the Department of Environment and Natural Resources on the holistic wastewater collection system permit program required by the Clean Water Act of 1999 (SL 1999-329) and the results of a study on the benefits and feasibility of requiring privately-owned wastewater treatment systems to connect to publicly-owned systems. This study was also required by SL 1999-329.

The ERC was informed that on February 10, 2000, the EMC enacted temporary rules to permit collection systems on a holistic basis, rather than permitting individual sewer extensions as it had formerly. The new collection system permits will require compliance with planning, operation and maintenance standards, which are intended to reduce releases of untreated sewage. The ERC was also informed that there was strong support for requiring that non-compliant wastewater treatment systems connect to regional systems, but that targeting privately-owned systems was not necessarily the most advisable approach, because many small municipalities and schools have more compliance problems than privately-owned systems.

Acquisition of Additional Parklands at Lake James State Park

The Legislative Research Commission referred to the Environmental Review Commission (ERC) the study of the acquisition of additional parklands at Lake James State Park as stated in S.L. 1999-395, Sec. 2.1(1)(f). The ERC considered this matter at its January 20, 2000 meeting. Dr. Philip K. McKnelly, Director of the Division of Parks and Recreation, Department of Environment and Natural Resources, provided the ERC with background information on this matter. Lake James State Park, which is located in Burke and McDowell Counties, is a very popular park, and the facilities are inadequate to accommodate the level of visitation according to Dr. McKnelly. The Department of Environment and Natural Resources and Duke Energy, the owner of the property surrounding the park, have been discussing a transfer of some of the acreage adjacent to the park. The ERC may continue to consider this matter.

